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TITLE 6—AGRICULTURAL CREDIT

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

Subchapter B—Loans, Purchases, and Other Operations
[Amdt. 1]

PART 446—PEANUTS

SUBPART—1958 CROP PEANUT PRICE SUPPORT PROGRAM

PURCHASE OF ELIGIBLE NO. 2 SHELLED PEANUTS

The regulations issued by Commodity Credit Corporation (hereinafter referred to as "CCC"), with respect to the 1958 crop Peanut Price Support Program (23 F. R. 6583) are amended by the addition of the following rules and regulations governing the purchase of eligible No. 2 shelled peanuts.

§ 446.1023 *Purchase of No. 2 shelled peanuts.* Subject to the terms and conditions of §§ 446.1023 to 446.1035 CCC will purchase from shellers No. 2 shelled peanuts which meet the eligibility requirements stated in § 446.1024, other than those produced in a seed shelling operation (hereinafter referred to as "No. 2 peanuts") offered to the associations listed below, each of which is designated to accept No. 2 peanuts on behalf of CCC in the area specified. Shellers located in any such area who are interested in selling No. 2 peanuts to CCC should so notify the association for the area in which the sheller is located within 90 days after the date this subpart is published in the FEDERAL REGISTER, or such later date as may be specified by CCC. Purchases will be made from only those shellers who have indicated such intention within the time prescribed.

Southeastern area—GFA Peanut Association, Camilla, Ga.

Southwestern area—Southwestern Peanut Growers' Association, Gorman, Tex.

Virginia-Carolina area—Peanut Growers Cooperative Marketing Association, Franklin, Va.

This issue includes two parts bound together. Part II contains the decision relating to handling of milk in the Southeastern New England marketing area, 7 CFR Part 990, issued by Agricultural Marketing Service, Department of Agriculture.

§ 446.1024 *Eligibility requirements for No. 2 peanuts.* No. 2 peanuts of any type offered to CCC by shellers must:

(a) Meet the standards for U. S. No. 2 shelled peanuts of such type (as specified in the U. S. Standards issued by the U. S. Department of Agriculture, Agricultural Marketing Service, effective July 31, 1956, in the case of Runner, Spanish and Valencia type peanuts and effective September 15, 1957, in the case of Virginia type peanuts): *Provided, however,* That such peanuts may contain not more than (1) six percent damaged and unshelled peanuts, (2) two percent minor defects, except that any unused part of the tolerance for damaged and unshelled peanuts shall be allowed for minor defects, (3) two percent foreign material, (4) eleven percent for sound peanuts and portions of peanuts which will pass through the screen prescribed for such type and for minor defects, and (5) nine percent moisture: *And provided further,* That no straight shelled peanuts shall be eligible for sale to CCC.

(b) Be 1958 crop peanuts, milled in the sheller's own plant and free and clear of all liens and encumbrances:

(c) Not exceed 200 pounds per ton, net weight, of eligible 1958 crop farmers stock peanuts purchased by the sheller (prior to the end of the period in which offers from shellers will be accepted) from producers or from an association which redeemed such farmers stock peanuts from the price support loan. The type and grade of all such farmers stock peanuts must have been determined by Federal or Federal-State inspectors.

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§ 446.1025 *Sheller's agreement to service producers and the association.* Each sheller who offers No. 2 peanuts to CCC shall, upon request throughout the program year beginning August 1, 1958, (a) inform a producer of the amount he could obtain for his peanuts under a price support loan to the association and also inform the producer where he may deliver his peanuts to such association, and (b) make available to such association warehouse space for storage of loan peanuts under contract, CCC Peanut Form 28 (1958), except that such association may waive such requirement if the sheller demonstrates to the satisfaction of the association that he needs the space for his customary business operations. CCC reserves the right to refuse to purchase No. 2 peanuts from any sheller if CCC determines that the sheller failed to comply fully with the provisions of this section.

§ 446.1026 *Period in which offers will be accepted.* (a) Written offers of No. 2 peanuts may be filed with the associa-

tions through July 15, 1959, unless a later date is approved in writing by CCC: *Provided, however,* That CCC may at any time prior to July 15, 1959, or such later date as is approved by CCC, terminate its obligation to accept any offers of No. 2 peanuts: *And provided further,* That upon notification to the shellers CCC may suspend its offer to purchase for a specified period of time. The date the offer is received by the association shall be deemed to be the date of the offer. The offer, all the provisions of this subpart relating to No. 2 peanuts, and the written acceptance by the association shall constitute the contract between the sheller and CCC.

(b) At any time prior to the end of the period during which offers will be accepted, the association may send the sheller a written request for information with respect to the quantity of No. 2 peanuts in the sheller's inventory which are eligible for sale to CCC. If the sheller fails to mail such information to the association within seven days from the date of the association's request, CCC shall not be obligated thereafter to purchase any peanuts from such sheller.

§ 446.1027 *Minimum quantity and terms of offer.* (a) The minimum quantity of No. 2 peanuts which may be offered at any time is 25,000 pounds. All No. 2 peanuts offered at one time for delivery at one location shall be included in one offer.

(b) Each offer shall be made in the manner prescribed by CCC and shall contain the sheller's certification and agreement that (1) the offer is made pursuant to the terms and conditions of all the provisions of this subpart relating to No. 2 peanuts, (2) the peanuts meet the eligibility requirements in § 446.1024, (3) the sheller has fulfilled all the obligations of this subpart relating to No. 2 peanuts which are required to be fulfilled prior to the submission of an offer, and (4) the sheller will carry out all of the obligations which remain to be performed after the offer is made.

§ 446.1028 *Inspecting, grading, sealing, and rejecting No. 2 peanuts offered.* (a) The type and grade of the No. 2 peanuts purchased by CCC pursuant to each offer shall be determined, at the time specified by CCC, by Federal or Federal-State inspectors and evidenced by inspection certificates issued by such inspectors. The sheller shall pay the cost of inspection and grading.

(b) The inspection data shall be used to determine (1) that the No. 2 peanuts meet the eligibility requirements with respect to grade and quantity specified in § 446.1024, (2) the net weight and (3) the price which CCC will pay for No. 2 peanuts. Any determination of grade shall be subject to appeal in accordance with the inspection agency procedure.

(c) Each bag of No. 2 peanuts purchased by CCC shall be identified with a seal furnished by CCC and affixed in accordance with instructions issued by the Federal or Federal-State Inspection Service. CCC shall have the right to re-inspect the No. 2 peanuts at its own expense within 5 days after receipt at destination.

(d) CCC may reject all or any part of the quantity offered in one offer if any bag of peanuts included in such offer does not meet the eligibility requirements in § 446.1024 at the time of the original inspection or re-inspection, or if peanuts of an inferior quality have been concealed in any bag.

§ 446.1029 *Net weight of No. 2 peanuts.* The net weight of a lot of No. 2 peanuts shall be that weight obtained by multiplying the gross weight, including bags, by a percentage equal to 100 percent minus the percentage of foreign material shown on the inspection certificate issued pursuant to § 446.1028. The gross weight shall be determined by actual weight, as prescribed by CCC.

§ 446.1030 *Delivery and passage of title.* (a) (1) The sheller shall deliver No. 2 peanuts in accordance with instructions issued by the association. Such delivery instructions, except as provided in paragraph (b) of this section, shall be issued within 25 days after the date of the association's written acceptance of the offer.

(2) The sheller shall deliver all No. 2 peanuts in bags of uniform size, which are packed in accordance with good commercial practices. Such bags shall be made of new burlap of not less than 10-ounce weight material. Plain unprinted bags stenciled in accordance with instructions issued by CCC may be required in some instances.

(3) If, as of the date No. 2 peanuts are moved out of the sheller's plant, such peanuts are subject to condemnation or disqualification for use as human food by the Food and Drug Administration, U. S. Department of Health, Education, and Welfare, or if CCC determines that such peanuts would be subject to condemnation or disqualification if moved in interstate commerce, such peanuts shall not be delivered to CCC, or if delivered shall be rejected by CCC, and any amount paid to the sheller with respect to such peanuts shall be refunded to CCC.

(4) If the sheller fails to deliver, as prescribed in delivery instructions, a quantity of eligible No. 2 peanuts equal to at least 95 percent of the quantity offered by him and accepted by the association, or if the sheller delivers peanuts which are ineligible and CCC determines that such peanuts can be rejected to the sheller, the sheller shall pay to CCC, as liquidated damages and not as a penalty, an amount equal to 2 cents per pound (i) for the quantity by which the quantity delivered is less than 95 percent of that offered by the sheller and accepted by the association, or (ii) for the quantity of ineligible peanuts delivered. Because of the difficulty in ascertaining the exact damages which CCC would suffer in these situations, CCC and the sheller agree that such liquidated damages constitute a reasonable estimate of the probable actual damages. The sheller shall also refund to CCC any amount paid to him with respect to ineligible peanuts which are rejected.

(5) If the sheller delivers to CCC ineligible peanuts and CCC determines that such ineligible peanuts cannot be

rejected to the sheller, the sheller shall pay as compensation to CCC an amount determined by CCC to be equal to the difference between the price paid to the sheller for the ineligible peanuts and the price received by CCC upon the sale of such ineligible peanuts, together with any costs incurred by CCC with respect to such ineligible peanuts.

(b) Title to the No. 2 peanuts shall pass to CCC upon delivery from the sheller's plant, f. o. b. railroad cars or trucks at CCC's option, except that in the event the association does not issue delivery instructions within 25 days after the date of its written acceptance of the offer title shall pass to CCC on the 30th day after the date of such written acceptance if the sheller, on or before such 30th day, places the No. 2 peanuts in identity preserved storage in a facility approved by CCC and delivers to CCC a storage certificate, in form acceptable to CCC, which properly identifies the peanuts. The gross weight of the peanuts for which the storage certificate is issued shall be determined, after the expiration of the 25-day period within which the association was to have issued shipping instructions, by a weighmaster and on scales approved by CCC. Subject to the provisions of paragraph (a) (3) of this section, the sheller shall not be responsible for deterioration or for uninsured loss or damage to the No. 2 peanuts after passage of title to CCC unless such deterioration or such uninsured loss or damage is due to his fault, negligence, or failure to exercise such care in storing or handling such peanuts as a reasonably prudent owner thereof would exercise. If such peanuts are insured such insurance shall inure to the benefit of CCC. If the sheller fails to issue the storage certificate, title shall not pass until the peanuts are delivered in accordance with instructions issued by the association, and CCC shall not pay any storage or handling charges with respect to such peanuts.

§ 446.1031 *Payment for No. 2 peanuts.* (a) CCC will purchase No. 2 peanuts at the price in effect on the date the offer is accepted by the association. No. 2 peanut prices shall be established by the Executive Vice President, CCC, who may revise such prices upward or downward at his discretion. Associations designated in § 446.1023 will furnish current No. 2 peanut prices to shellers who have informed the associations of their interest in selling No. 2 peanuts to CCC. However, a sheller shall have the right to withdraw his offer if the price is reduced before the offer is accepted by the association.

(b) With respect to No. 2 peanuts stored by the sheller and for which title has passed to CCC pursuant to § 446.1030 (b), payment for warehouse charges shall be the sum of:

(1) \$0.50 per net weight ton for handling-in charges,

(2) \$0.50 per net weight ton for handling-out charges (delivery f. o. b. railroad cars or trucks at CCC's option), and

(3) \$1.00 per net weight ton per month fractions of ton and month in proportion, for storage charges. The storage month shall begin on the

date title passes to CCC and shall run from that date to, but not including the corresponding day of the next calendar month. The storage period shall end on the day prior to the date the peanuts are delivered from storage.

(c) (1) Payment for the No. 2 peanuts and for any warehouse charges shall be made, at the time specified below, upon presentation to the association of a proper invoice and supporting documents prescribed by CCC.

(2) Payment for the No. 2 peanuts for which title passed to CCC upon delivery shall be made, after delivery, on the net weight determined from the gross weight obtained at the time the No. 2 peanuts are loaded out of the sheller's plant.

(3) Payment for the No. 2 peanuts for which title passed to CCC while the peanuts remained in the sheller's storage facilities, as provided in § 446.1030 (b), shall be made after title has passed to CCC; but payment of the warehouse charges specified in paragraph (b) of this section for such No. 2 peanuts shall be made after the peanuts are delivered. The net weight on which the amount of payment for both the No. 2 peanuts and the warehouse charges is determined, shall be the net weight of the peanuts for which the storage certificate was issued.

§ 446.1032 *Records and reports.* (a) The records of the sheller shall at all times show (1) with respect to farmers stock peanuts purchased direct from producers and for which the type and grade were determined by Federal or Federal-State inspectors, the date and place received, the names and addresses of the producers, the types, grades, and the pounds of each such grade received from each producer, (2) the type, grade, and quantity of farmers stock peanuts purchased from an association, (3) the types, grades, and quantity of farmers stock peanuts purchased without inspection by Federal or Federal-State inspectors and (4) the types, grades, and quantity of No. 2 peanuts produced. The sheller shall keep such accounts and other records and shall furnish such information and reports relating to the No. 2 peanuts and the farmers stock peanuts from which No. 2 peanuts were produced, as may be prescribed or requested by CCC. The association designated in § 446.1023 for the area in which the sheller is located or CCC may examine and audit the accounts and records of the sheller and may require the sheller to make all of his records available at the main office at any time an audit is made. All books, accounts, and records shall be retained for a period of two years after the last No. 2 peanuts are delivered to CCC.

(b) The reporting and record keeping requirements contained in this subpart have been approved by, and subsequent reporting requirements will be subject to approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

§ 446.1033 *Assignment.* No contract, claim, or payment pursuant to any of the provisions of this subpart relating to No. 2 peanuts shall be assigned in whole or in part by the sheller without the prior written approval of CCC, and any such

assignment shall be in such form as may be approved or prescribed by CCC.

§ 446.1034 *Officials not to benefit.* No Member of or Delegate to the Congress of the United States shall be admitted to any share or part of any agreement or contract between the sheller and CCC pursuant to any of the provisions of this subpart relating to No. 2 peanuts, or to any benefit to arise therefrom, but this provision shall not be construed to extend to benefits arising from such agreement or contract if accruing to a corporation or a producer in his capacity of producer.

§ 446.1035 *Contingent fees.* The sheller shall not employ any person to solicit or secure any contract pursuant to any of the provisions of this subpart relating to No. 2 peanuts upon any stipulation for a commission, percentage, brokerage, or contingent fee. Breach of this provision shall give CCC the right to annul the contract, or, in its discretion, to deduct from any amount due the sheller the amount of such commission, percentage, brokerage, or contingent fee.

(Sec. 4, 62 Stat. 1070, as amended; 15 U. S. C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 101, 401, 63 Stat. 1051, 1054, sec. 201, 68 Stat. 899; 15 U. S. C. 714c, 7 U. S. C. 1441, 1421)

Issued this 17th day of October 1938.

[SEAL] CLARENCE L. MILLER,
Acting Executive Vice President,
Commodity Credit Corporation.

[F. R. Doc. 58-8825; Filed, Oct. 23, 1938;
8:53 a. m.]

TITLE 7—AGRICULTURE

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

Subchapter C—Regulations and Standards Under the Farm Products Inspection Act

PART 55—GRADING AND INSPECTION OF EGG PRODUCTS

CHARGES AND OTHER PROVISIONS DURING SEASON OF NO OPERATION

Notice of a proposed amendment to the regulations governing the grading and inspection of egg products (7 CFR Part 55), was published in the FEDERAL REGISTER of October 1, 1938 (23 F. R. 7603). The amendment hereinafter promulgated is issued pursuant to authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U. S. C. 1621 et seq.).

The amendment provides for the removal of a grader at the request of the applicant who wishes to retain an application in effect for grading service while the designated plant is closed for the season. An administrative service charge of \$25.00 shall be paid for each calendar month in which the application is in effect and no product is processed.

The amendment is as follows:

Insert a new § 55.70 *Charges and other provisions where application is in effect during season of no operation* to read as follows:

§ 55.70 Charges and other provisions where application is in effect during season of no operation—(a) Charges. If an applicant requests in writing the removal of a grader or graders while the designated plant is closed for the season, and such request is granted by the Administrator, an administrative service charge of \$25.00 shall be paid by the applicant for each calendar month in which the application is in effect and no product is processed. No other charges pursuant to § 55.68 will be applicable. A form for making a request in accordance with the provisions of this section may be obtained from the Administrator.

(b) Other provisions. In making a request, the applicant shall agree not to process or label any product until a grader is reassigned; to request reassignment of a grader twenty days prior to the date that operations will be resumed; and not to use or ship any packaging or labeling material bearing the official mark without prior approval of a Federal-State supervisor.

(Sec. 205, 60 Stat. 1090, as amended; 7 U. S. C. 1624)

Issued at Washington, D. C., this 21st day of October 1958, to become effective December 1, 1958.

(SEAL) ROY W. LENNARTSON,
Deputy Administrator,
Agricultural Marketing Service.

[F. R. Doc. 58-8836; Filed, Oct. 23, 1958; 8:56 a. m.]

designated plant is closed for the season, and such request is granted by the Administrator, an administrative service charge of \$25.00 shall be paid by the applicant for each calendar month in which the application is in effect and no product is processed. No other charges pursuant to § 70.138 will be applicable. A form for making a request in accordance with the provisions of this section may be obtained from the Administrator.

(b) Other provisions. In making a request, the applicant shall agree not to process or label any product until a grader is reassigned; to request reassignment of a grader twenty days prior to the date that operations will be resumed; and not to use or ship any packaging or labeling material bearing the official mark without prior approval of a Federal-State supervisor.

(60 Stat. 1090; 7 U. S. C. 1624)

Issued at Washington, D. C., this 21st day of October 1958, to become effective December 1, 1958.

(SEAL) ROY W. LENNARTSON,
Deputy Administrator,
Agricultural Marketing Service.

[F. R. Doc. 58-8835; Filed, Oct. 23, 1958; 8:56 a. m.]

Chapter III—Agricultural Research Service, Department of Agriculture

PART 301—DOMESTIC QUARANTINE NOTICES

PART 319—FOREIGN QUARANTINE NOTICES

PART 324—MOLLUSKS

PART 330—FEDERAL PLANT PEST REGULATIONS

REGULATIONS TO PREVENT ENTRY AND INTERSTATE MOVEMENT OF PLANT PESTS

On July 4, 1958, there was published in the FEDERAL REGISTER (23 F. R. 5123) a notice of proposed rule making concerning the adoption of regulations to appear as a new Part 330 entitled "Plant Pests" (hereby retitled as "Federal Plant Pest Regulations") in Chapter III, Title 7, of the Code of Federal Regulations. After due consideration of all relevant matters presented and under the authority of the Federal Plant Pest Act of May 23, 1957 (Title I of Public Law 85-36, 71 Stat. 31; 7 U. S. C. 150aa-150jj), section 9 of the Plant Quarantine Act of 1912 (37 Stat. 318, 7 U. S. C. 162), and section 501 of the Act of August 31, 1951 (65 Stat. 290; 5 U. S. C. 140), regulations to appear in 7 CFR Part 330 are hereby issued, the regulations in 7 CFR Part 324 are superseded thereby, and amendments are made in 7 CFR Parts 301 and 319, respectively, as follows.

A. Part 330 is added to read as set forth below:

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330.100	Definitions.
330.101	Policy.
330.102	Basis for certain regulations.
330.103	Documentation.
330.104	Ports of entry.
330.105	Inspection.
330.106	Emergency measures.
330.107	Costs.

Sec.	
330.108	Authority to issue administrative instructions.
330.109	Caution.

Subpart—Movement of Plant Pests

330.200	Movement of plant pests regulated; permits required.
330.201	Applications for permits to move plant pests.
330.202	Consideration of applications for permits to move plant pests.
330.203	Action on applications for permits to move plant pests; form of and conditions in permits.
330.204	Denial or cancellation of permits; reconsiderations.
330.205	Disposal of plant pests when permits are cancelled.
330.206	Permits for plant pest movement associated with National Defense projects.
330.207	Permits for movement of organisms issued by other agencies.
330.208	Courtesy permits.
330.209	Permits for means of conveyance.
330.210	Packing materials and containers for plant pest movement; host materials.
330.211	Labelling of plant pests for movement under permits.
330.212	Movement of plant pests by baggage.

Subpart—Movement of Soil, Stone, and Quarry Products

330.300	Soil from foreign countries or Territories or possessions.
330.301	Stone and quarry products from certain areas in Canada.
330.302	Domestic movements of earth (including soil), stone, etc.

Subpart—Garbage

330.400	Garbage.
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AUTHORITY: §§ 330.100 to 330.400 issued under sec. 9, 37 Stat. 318, sec. 501, 65 Stat. 290, secs. 103, 106, 71 Stat. 32, 33; 7 U. S. C. 162, 5 U. S. C. 140, 7 U. S. C. 150bb, 150cc. Interpret or apply sec. 8, 37 Stat. 318, as amended, secs. 105, 107, 111, 71 Stat. 32, 34, 35; 7 U. S. C. 161, 150dd, 150ff, 141 note.)

SUBPART—GENERAL PROVISIONS

§ 330.100 Definitions. Words used in the singular form in the regulations in this part shall be deemed to import the plural and vice versa, as the case may demand. For the purposes of this part, unless the context otherwise requires, the following words shall be construed, respectively, to mean:

(a) **Department.** The United States Department of Agriculture.

(b) **Director.** The Director of the Plant Quarantine Division of the Agricultural Research Service of the Department, or any officer or employee of the Division to whom authority has heretofore been delegated or may hereafter be delegated to act in his stead, except for actions to be taken by the Director of the Plant Pest Control Division of said Service as provided in § 330.202 (b), in which cases "Director" means the Director of the Plant Pest Control Division or any officer or employee of that Division to whom authority has heretofore been delegated or may hereafter be delegated to act in his stead.

(c) **Division.** The Plant Quarantine Division, Agricultural Research Service of the Department.

(d) **Inspector.** A properly identified employee of the Department or other

PART 70—GRADING AND INSPECTION OF POULTRY AND EDIBLE PRODUCTS THEREOF; AND UNITED STATES CLASSES, STANDARDS, AND GRADES WITH RESPECT THERETO

CHARGES AND OTHER PROVISIONS DURING SEASON OF NO OPERATION

Notice of a proposed amendment to the regulations governing the grading and inspection of poultry and edible products thereof and United States classes, standards, and grades with respect thereto (7 CFR Part 70), was published in the FEDERAL REGISTER of October 1, 1958 (23 F. R. 7603). The amendment hereinafter promulgated is issued pursuant to authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U. S. C. 1621 et seq.).

The amendment provides for the removal of a grader at the request of the applicant who wishes to retain an application in effect for grading service while the designated plant is closed for the season. An administrative service charge of \$25.00 shall be paid for each calendar month in which the application is in effect and no product is processed.

The amendment is as follows:

Insert a new § 70.142 *Charges and other provisions where application is in effect during season of no operation* to read as follows:

§ 70.142 Charges and other provisions where application is in effect during season of no operation—(a) Charges. If an applicant requests in writing the removal of a grader or graders while the

person authorized by the Department to enforce the provisions of the Federal Plant Pest Act and the Plant Quarantine Act.

(e) *Customs.* The Bureau of Customs, United States Treasury Department, or, with reference to Guam, the Customs office of the Government of Guam.

(f) *Person.* Any individual, corporation, company, association, firm, partnership, society, or joint stock company.

(g) *Owner.* The owner, or his agent (including a carrier), having responsible custody of a plant pest, means of conveyance, product or article subject to the regulations in this part.

(h) *Plant pest.* "Plant pest" means any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants.

(i) *United States.* The States, the District of Columbia, Alaska, Guam, Hawaii, Puerto Rico, and the Virgin Islands of the United States.

(j) *Continental United States.* The States and the District of Columbia.

(k) *Territories or possessions.* Alaska, Guam, Hawaii, Puerto Rico, and the Virgin Islands of the United States.

(l) *Interstate.* From one State, Territory or possession or the District of Columbia into or through any other State, Territory or possession, or the District of Columbia. This term includes movements, within its provisions, to a port in the United States for export.

(m) *Move (moved and movement).* "Move" means ship, deposit for transmission in the mail, otherwise offer for shipment, offer for entry, import, receive for transportation, carry, or otherwise transport or move, or allow to be moved, by mail or otherwise. "Moved" and "movement" shall be construed accordingly.

(n) *Through the United States.* From and to places outside the United States.

(o) *Means of conveyance.* Automobiles, trucks, animal-drawn vehicles, railway cars, aircraft, boats, and other means of transportation.

(p) *Permit.* An authorization allowing the movement into or through the United States, or interstate, of a plant pest, or a regulated product, article, or means of conveyance in accordance with the provisions in this part.

(q) *The Federal Plant Pest Act.* Title I of the act approved May 23, 1957 (Title I, 71 Stat. 31; 7 U. S. C. 150aa et seq.).

(r) *Plant Quarantine Act.* The act approved August 20, 1912, 37 Stat. 315, as amended (7 U. S. C. 151 et seq.).

(s) *Earth.* The softer matter composing part of the surface of the globe, in distinction from the firm rock, and including the soil and subsoil, as well as finely divided rock and other soil formation materials down to the rock layer.

(t) *Soil.* The loose surface material of the earth in which plants grow, in most cases consisting of disintegrated rock with an admixture of organic material and soluble salts.

(u) *Garbage.* Any refuse material that contains fruit, vegetable, or other plant matter.

(v) *Administrative instructions.* Published documents relating to the enforcement of the regulations in this part, issued under authority of such regulations by the Director.

§ 330.101 *Policy.* The purpose of the regulations in this part is to prevent the dissemination of plant pests into the United States, or interstate, by regulating the movement of plant pests into or through the United States, or interstate, and the movement of means of conveyance, earth, stone and quarry products, garbage, and certain other products and articles into or through the United States, or from any Territory or possession into or through any other Territory or possession or the continental United States. The Director shall employ procedures to carry out this purpose which will impose a minimum of impediment to foreign commerce and travel whenever practicable, consistent with proper precaution against plant pest dissemination. The same policy is to be applied in the case of interstate commerce and travel.

§ 330.102 *Basis for certain regulations.* Whereas the unregulated movement of means of conveyance, their stores, baggage, mail, plants, plant products, garbage, earth, stone and quarry products, and other products and articles into or through the United States from places outside thereof or from any Territory or possession into or through any other Territory or possession or the continental United States may disseminate plant pests which are outside the scope of the Plant Quarantine Act, as well as pests within that act, and whereas authority to regulate the movement into or through the United States from foreign countries of means of conveyance and other non-plant products and articles, independently of plants or plant products, is not conferred by the Plant Quarantine Act, the regulations in this part or promulgated under the authority of the Federal Plant Pest Act.

§ 330.103 *Documentation.* Any notifications, reports, and similar documentation not specified in the regulations in this part, but necessary to carry out the purpose of the regulations, will be prescribed in administrative instructions.

§ 330.104 *Ports of entry.* Ports of entry for plant pests, means of conveyance, or other products or articles of any character whatsoever the entry or movement of which is regulated by the regulations in this part may be specified in administrative instructions or in the permits if permits are required by the regulations. Such ports shall be selected by the Director from ports named in 19 CFR 1.1 as "ports of entry" for the purpose of enforcing the customs laws or named in 19 CFR 6.13 as "international airports," or airports at which permission to land aircraft has been granted by the Com-

missioner of Customs or by the Collectors of Customs in accordance with 19 CFR 6.2. Except as otherwise provided by administrative instructions, or by permits issued in accordance with this part, the ports of entry shall be those named in 19 CFR 1.1 and 6.13. The port of entry in Guam shall be Agaña unless otherwise specified in the permit by the Director.

§ 330.105 *Inspection.*—(a) *Inspection of foreign arrivals.* In order to prevent the dissemination into the United States of plant pests and for the purpose of carrying out the regulations in this part, all plant pests; means of conveyance and their stores; baggage; mail; plants; plant products; soil; stone and quarry products under § 330.300; garbage; and any other product or article of any character whatsoever which an inspector considers may be infested or infected by or contain a plant pest, arriving in the United States from any place outside thereof for entry into or movement through the United States shall be subject to inspection by an inspector at the port of first arrival, except that mail will be handled in accordance with the joint customs and postal regulations for inspecting and handling mail. No such plant pests; means of conveyance or their stores; baggage; mail; plants; plant products; soil; stone or quarry products under § 330.300; garbage; or other products or articles which an inspector notifies the Customs authorities should be held for inspection shall be released by Customs officers for entry or onward movement until released by an inspector. The release of all means of conveyance, products and articles regulated under Parts 319, 320, 321, and 352 of this chapter shall be in accordance with the requirements of those parts and the applicable provisions in this part. Whenever it shall be deemed safe to modify the requirements of this section by exempting any class of means of conveyance, products or articles from the requirement that they be held for inspection and release of the inspector, the exemptions shall be specified in administrative instructions. Inspectors shall make local arrangements, in accordance with policies of the Division, with the Collector of Customs for the release by Customs officers on behalf of the inspector of any class of means of conveyance, their stores, baggage, mail, or other products or articles when such arrangements do not increase unduly the danger of plant pest dissemination and will facilitate clearance of means of conveyance, baggage, mail, or other products or articles.

(b) *Inspection of domestic movements.* For the purpose of preventing the interstate movement of plant pests, provisions requiring inspection of means of conveyance and products or articles moving interstate may be issued as regulations in association with quarantines in Part 301 of this chapter or in this part.

§ 330.106 *Emergency measures.* (a) Whenever inspection of any means of conveyance, stores, baggage, mail, plants, plant products, earth, stone and quarry products, garbage, or other products or articles of any character

whatsoever, arriving in the United States from a place outside thereof, or in the continental United States from any Territory or possession, or in a Territory or possession from any other Territory or possession, discloses a plant pest (other than one moving under permit in accordance with any conditions in the permit and the provisions in this part) which is new to, or not theretofore known to be widely prevalent or distributed within and throughout the United States, the inspector shall employ procedures necessary to prevent the dissemination of the plant pest. The inspector may follow administrative instructions containing procedures prescribed for certain situations, or he may follow a procedure selected by him from administratively approved methods known to be effective. The procedure may involve seizure, quarantine, treatment, application of other remedial measures, exportation, return to shipping point of origin, destruction, or other disposal, but no means of conveyance, product, article, or plant pest owned by any person shall be destroyed, exported, or returned to shipping point of origin or ordered to be so handled, unless there is, in the opinion of the inspector, no less drastic action adequate to prevent the dissemination of the plant pest. In forming such an opinion that no less drastic action is adequate, the inspector shall be guided by specific and general instructions received from Division officers applicable in such cases. This section does not authorize action with respect to any means of conveyance, product, article, or plant pest which, at the time of the proposed action, is subject to disposal under the Plant Quarantine Act. In taking action with respect to any means of conveyance, product, article, or plant pest the inspector shall take cognizance of applicable requirements of the customs and postal laws and regulations.

(b) The inspector may order the owner of any means of conveyance, product, article, or plant pest, subject to disposal under paragraph (a) of this section, to treat, apply other remedial measures, destroy, or make other disposal thereof without cost to the Federal Government and in a manner specified in accordance with paragraph (a) of this section.

(c) If the measures required by the inspector are not applied promptly by the owner within the time limits specified by the inspector, the inspector shall apply measures necessary to prevent the dissemination of the plant pests.

§ 330.107 *Costs.* All costs (including those incurred under § 330.106 by the government or the owner) incident to the inspection, handling, cleaning, safeguarding, treating, or other disposal of means of conveyance or products, articles, or plant pests under this part, except for the services of an inspector during regularly assigned hours of duty and at the usual places of duty, shall be borne by the owner.

§ 330.108 *Authority to issue administrative instructions.* The Director is authorized to issue the administrative instructions for which provision is made

in the regulations in this part, for the purpose of preventing dissemination of plant pests into the United States or interstate. In addition, whenever the Director shall find that existing conditions as to pest risk involved in the movement of plant pests, means of conveyance, or other products or articles to which the regulations in this part apply, make it safe to modify by making less stringent the restrictions contained in any of such regulations, he shall publish such findings in administrative instructions, specifying the manner in which the regulations shall be made less stringent, whereupon such modification shall become effective.

§ 330.109 *Caution.* In applying treatments or taking other measures prescribed in administrative instructions or by the inspector, it should be understood that inexactness or carelessness may result in injury or damage.

SUBPART—MOVEMENT OF PLANT PESTS

§ 330.200 *Movement of plant pests regulated; permits required.* No person shall knowingly move any plant pest into or through the United States from any place outside thereof, or interstate, or knowingly accept delivery of any plant pest so moving unless such movement is authorized under permit under this part and is made in accordance with the conditions therein and the provisions in this part. The movement of snails and slugs, as well as other plant pests, is governed by such provisions. Biological specimens of plant pests, in preservative or dried, may be imported without further restriction under this part, but subject to inspection on arrival in the United States to confirm the nature of the material and freedom from risk of plant pest dissemination.

§ 330.201 *Applications for permits to move plant pests—(a) Into or through the United States from any place outside thereof.* Only persons resident in the United States may apply for permits to move plant pests into the United States from any place outside thereof. Persons resident in the United States proposing such movement into the United States, or any person proposing movement through the United States, of any plant pests shall first make application for permits authorizing such movement by submitting to the Division the form provided therefor by the Division, or by submitting in the form of a letter or other written communication the following information insofar as is known to the applicant, for each kind of pest for which a permit is requested: (1) Scientific name of the pest, (2) stage, (3) quantity, (4) origin, (5) destination, (6) whether the pest is established in the State, Territory or other jurisdiction of destination in the United States, (7) method of shipment, (8) proposed port of first arrival in the United States, (9) approximate date of arrival, (10) number of parcels expected to be moved, (11) intended use, (12) measures to be employed to prevent danger of plant pest dissemination, and (13) method of final disposition. In addition, if host materials must necessarily accompany the plant pests, the

application shall show the name of the host materials and the reasons it is necessary for them to accompany the plant pests. Applications for permits to move plant pests through the United States should state the name of the port of export instead of the information required by subparagraph (6) of this paragraph. Any applicant for a permit to move plant pests into or through the United States from any place outside thereof will facilitate the consideration of his application by furnishing any additional information known to him concerning the economic importance of the pests and the justification for the movement.

(b) *Interstate (including interstate for export).* Persons proposing to move plant pests interstate shall first make application for permits authorizing such movement by submitting to the Division the form provided therefor by the Division or by submitting the required information in the form of a letter or other written communication showing all pertinent information specified in paragraph (a) of this section and also the approximate date of the movement, except that persons desiring to move plant pests interstate to a port in the United States for export to a place outside of the United States¹ shall use the form provided therefor by the Division or submit to the Division in the form of a letter or other written communication the following information for each kind of pest: Scientific name of the pest, stage, quantity, origin, destination, method of shipment, proposed port of export from the United States, approximate date of the movement, number of parcels to be moved, proposed use, and measures to be employed to prevent danger of plant pest dissemination during the interstate movement. However in case it is proposed to move interstate, within or from an area quarantined under §§ 301.38, 301.45, 301.48, 301.52, 301.63, 301.64, 301.72, 301.76, 301.77, 301.78, 301.79, 301.80, or 301.81 of this chapter any plant pest covered by said section, the application should be made to the Plant Pest Control Division of the Agricultural Research Service of the Department. In any case the applicant for a permit will facilitate the consideration of his application by furnishing any additional information known to him concerning the economic importance of the pests and the justification for the movement.

§ 330.202 *Consideration of applications for permits to move plant pests.* Except as provided in paragraph (b) of this section, the Director, upon the receipt of an application, made in accordance with § 330.201 (a) or (b), for a permit for movement of a plant pest into or

¹Persons contemplating the shipment of plant pests to places outside the United States should make prior arrangements directly, or through the recipient, with the country of destination for the receipt of the plant pests into the country of destination. Many countries have laws governing the movement of plant pests into those countries, and therefore it is advisable to make advance arrangements for attaching permits, etc., as may be required by the countries of destination.

through the United States from any place outside thereof, or interstate, shall consider the application on its merits.

(a) *Consultation.* He may consult with any Federal officials, the appropriate officials of any State, Territory, or other jurisdiction in the United States in charge of research or regulatory programs relative to plant pests, and any other qualified governmental or private research laboratory, institution, or individual, for views on the danger of plant pest dissemination into the United States, or interstate, in connection with the movement proposed.

(b) *Plant pests covered in any subpart of Part 301 of this chapter that affects movement within the continental United States.* The Director shall refer to the Director of the Plant Pest Control Division of the Agricultural Research Service of the Department any application for movement of a plant pest which is received by the Plant Quarantine Division but which should be filed with the Director of the Plant Pest Control Division under § 330.201, and all other action with respect to any application within the jurisdiction of the Plant Pest Control Division under § 330.201, and the interstate movement of the plant pest named therein, shall be taken by the Director of the Plant Pest Control Division, or any officer or employee of that Division to whom authority has heretofore been delegated or may hereafter be delegated to act in his stead. Such action shall be in accordance with the procedures established in this part.

(c) *Inspection of premises.* The Director may inspect the site where plant pests are proposed to be handled in connection with or after their movement under permit to determine whether existing or proposed facilities will be adequate to prevent plant pest dissemination in case a permit is issued, provided that the person in possession thereof is the applicant or such inspection is otherwise authorized.

§ 330.203 *Action on applications for permits to move plant pests; form of and conditions in permits.* The Director, having considered an application for permit to move a plant pest, shall approve or deny the application in accordance with § 330.204. If the application is denied, the applicant shall be furnished the reasons therefor. If the application is approved, the Director shall issue the permit including any conditions which, in the opinion of the Director, are necessary to prevent dissemination of plant pests into the United States or interstate. Such conditions may include requirements for inspection of the premises where the plant pests are to be handled, after their movement under the permits, to determine whether the facilities thereat are adequate to prevent plant pest dissemination and the conditions of the permit are otherwise being observed. Permits authorizing movement of plant pests through the United States will include shipping instructions as to routing, labelling, and similar requirements as conditions of the permits. Any applicable conditions prescribed in administrative instructions may be incorporated in a written permit

by citation, but shall be applicable whether or not so cited. The Director may, prior to the issuance of the permit, require the applicant to agree in writing to the conditions under which the plant pests will be safeguarded. The permits may be issued in a prescribed form or in letter form, or a combination thereof. A permit without conditions may be issued orally.

§ 330.204 *Denial or cancellation of permits; reconsiderations.* (a) The Director will deny an application for a permit to move a plant pest when, in his opinion, such movement would involve a danger of dissemination of the pest. Danger of plant pest dissemination may be deemed to exist when:

(1) No acceptable safeguards adequate to prevent plant pest dissemination can be arranged;

(2) The destructive potential of the plant pest to plants, and parts and products thereof, should it escape despite proposed safeguards, outweighs the probable benefits to be derived from the proposed movement and use of the pest;

(3) The applicant, as a previous permittee, failed to maintain the safeguards or otherwise observe the conditions prescribed in a previous permit and failed to demonstrate his ability or intent to observe them in the future;

(4) The movement is adverse to the conduct of an eradication, suppression, control, or regulatory program of the Agricultural Research Service; or

(5) The movement is objected to in writing by an appropriate official of a State, Territory or possession, or the District of Columbia on the ground it will involve a danger of dissemination of the plant pest into the State, Territory or possession, or District.

(b) The Director may cancel any outstanding permit whenever:

(1) Information is received subsequent to the issuance of the permit of circumstances that constitute cause for the denial of an application for permit under paragraph (a) of this section; or

(2) The permittee has not maintained the safeguards or otherwise observed the conditions specified in the permit or in any applicable regulations or administrative instructions.

(c) Any person denied a permit, or whose permit has been cancelled, may request the Director in person or in writing for a reconsideration, and may submit any additional information he may have to support the original application.

§ 330.205 *Disposal of plant pests when permits are canceled.* When an outstanding permit for the movement of a plant pest is canceled by the Director and not reinstated under § 330.204 (c), the further movement of the plant pest covered thereby into or through the United States, or interstate, is prohibited by the Federal Plant Pest Act unless authorized in another permit. The permittee should arrange for disposal of the plant pest involved in a manner satisfactory to the Director to prevent plant pest dissemination. The Director may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely

prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as he deems appropriate, any plant pest which is moving without compliance with any conditions in the permit or the provisions of this part or after the permit has been canceled.

§ 330.206 *Permits for plant pest movement associated with National Defense projects.* The Director will facilitate research associated with National Defense projects through issuance of permits for movement of plant pests for such research, upon receiving assurance satisfactory to him that adequate safeguards will surround utilization of the plant pests to prevent their dissemination.

§ 330.207 *Permits for movement of organisms issued by other agencies.* Inspectors shall recognize permits for the movement of organisms issued under other acts by other Federal agencies. When such organisms are also plant pests, any further conditions of movement to carry out the purposes of the Federal Plant Pest Act which have been prescribed in administrative instructions, or in correspondence concerning a single shipment, shall be complied with but no additional permit will be required under this part.

§ 330.208 *Courtesy permits.* The Director may issue permits for the movement into or through the United States, or interstate, of organisms which are not subject to regulation under the Federal Plant Pest Act or any other act, as a courtesy to facilitate movement when the movement might otherwise be impeded because of the similarity of the organisms with others regulated under the Federal Plant Pest Act. He may likewise issue such permits on behalf of any agency requesting such action as a courtesy to facilitate movement for organisms not subject to regulation under the Federal Plant Pest Act but subject to regulation under some other act.

§ 330.209 *Permits for means of conveyance.* No permit shall be required for movement into or through the United States from any place outside thereof, or interstate, of a means of conveyance unless the primary purpose of such movement of the means of conveyance is to move plant pests.

§ 330.210 *Packing materials and containers for plant pest movement; host materials.* Plant pests moved into or through the United States, or interstate, must be free of soil, except when the Director approves in the permit the movement of soil with the plant pest. Subject to this exception, only approved packing materials are to be employed in the shipment of plant pests. Approved packing materials for the movement of plant pests under this part will be prescribed in administrative instructions or approved in specific cases by the Director. Such actions will be coordinated with and may supplement any requirements of the Post Office Department gov-

erning packing and packaging of any materials for movements covered by the postal laws and regulations. All containers shall be stoutly constructed so as to prevent breakage in transit and danger of plant pest dissemination and shall be labelled in accordance with § 330.211. The Director may allow the movement of host materials with plant pests under permits when they must necessarily accompany the pests, although such movement is otherwise barred under the Plant Quarantine Act.

§ 330.211 *Labelling of plant pests for movement under permits*—(a) *Interstate movement*. For interstate movements of plant pests a label shall be attached to each parcel containing the pests as evidence that the movement of the plant pests is authorized. Such label shall also disclose the contents of the parcel.

(b) *Movement into or through the United States from places outside thereof by mail or cargo*. (1) When a permit authorizing the movement of plant pests into the United States from any place outside thereof is issued to an applicant under this part, it will be accompanied by distinctive labels, with instructions for their use by the foreign shipper. Such labels will be issued in quantity sufficient to permit attaching one to each parcel to be moved. The labels will direct the parcels to specified inspection stations of the Division, or other designated points, for clearance. The stations will be notified by the Director in advance of the expected arrival of the plant pests. Plant pests so moved by mail may be refused entry unless the containers thereof bear such labels. Cargo shipments of plant pests so moved may be refused entry unless they bear such labels or are otherwise plainly marked to identify the contents.

(2) Any labelling requirements with respect to the movement of plant pests through the United States will be included in shipping instructions issued as conditions of the permits.

(c) *Misuse of labels*. No labels unused in accordance with the terms of the permit may be used for the movement of any other plant pest. The Federal Plant Pest Act provides a penalty^{*} for the misuse of labels under this part. Any unauthorized movement of plant pests under a label shall be refused by the inspector, and the plant pests so moved may be destroyed or otherwise dealt with as set out in § 330.106 if deemed necessary as an emergency measure under that section.

§ 330.212 *Movement of plant pests by baggage*. Persons proposing to move plant pests into or through the United States from any place outside thereof,

or from any Territory or possession into or through any other Territory or possession, or the Continental United States, by baggage, shall show the permit authorizing the movement to the inspector upon arrival at the port where the baggage is inspected. The conditions specified for the movement must be observed. The inspector will insure that the movement is handled in accordance with the terms of the permit. If it is necessary to move the plant pest to another place for clearance, the owner will be responsible for all costs incidental to such forwarding. Pending forwarding, the inspector will specify and supervise the application of safeguards against danger of plant pest dissemination and may retain custody of the pests until forwarded.

SUBPART—MOVEMENT OF SOIL, STONE, AND QUARRY PRODUCTS

§ 330.300 *Soil from foreign countries or Territories or possessions*. No soil shall be moved into or through the United States from any place outside thereof or from any Territory or possession into or through any other Territory or possession or the Continental United States, whether the soil is moved as such or incidentally adhering to means of conveyance or other articles, except as authorized in § 301.60, § 319.37-16a, or § 319.69, or this subpart. However this section shall not apply to the movement of soil from Mexico through Mexican Border ports, which movement is subject to the requirements in Part 320 of this chapter and, as applicable, §§ 319.37-16a and 319.69.

(a) *Permits authorized*. The Director may issue permits under this section for movements of soil not governed by § 301.60, § 319.37-16a, or § 319.69, or Part 320 of this chapter, for research, analytical, religious, ceremonial, patriotic, or similar purposes, or such other purposes as he shall deem consistent with the objectives of this part, specifying in the permit or in the related correspondence, the safeguards, including methods of treatment, or other conditions which he deems necessary for the purpose of preventing the dissemination of plant pests into the United States or Interstate. Whenever it is possible to formulate a general rule specifying such conditions, it shall be promulgated in administrative instructions and the applicable provisions thereof may be incorporated into a permit by citation, but shall be applicable whether or not so cited.

(b) *Application for permits*. Only persons resident in the United States may apply for permits under this section to move soil into the United States from any place outside thereof, or from any Territory or possession into or through any other Territory or possession or the Continental United States. Persons resident in the United States contemplating such movements, or any persons contemplating movement through the United States, of soil under this section shall first make application for permits authorizing such movement by submitting to the Division the form provided therefor by the Division or by submitting, in the form of a letter or other written communication, the following information: Origin of the ship-

ment, destination, quantity, method of shipment, proposed port of first arrival in the United States, port of export (if applicable), approximate date of arrival in the United States, intended use, measures to be employed to prevent danger of plant pest dissemination, method of final disposition, and the number of parcels expected to be moved. In acting upon the application for permits for such movement of soil, the Director will follow the procedures outlined in § 330.202 for the consideration of applications for permits to move plant pests insofar as they are applicable.

(c) *Issuance of permits; conditions of permits*. Upon the approval of an application for a permit authorizing the movement of soil under this section, the permit will be issued. The permit may contain any conditions which are necessary, in the opinion of the Director, to prevent dissemination of plant pests into the United States or Interstate, including conditions with respect to routing, packing, and labeling of the soil. The Director may require the applicant to agree in writing to such conditions prior to the issuance of the permit. The importer will receive, as a part of the permit, information on the manner in which the importation is to be made. A permit, information on the manner in which orally.

(d) *Containers; labels*. All containers for soil moved under this section shall be stoutly constructed so as to prevent breakage in transit and danger of plant pest dissemination and shall be appropriately labeled as to contents. If the soil is moved by mail, special mailing labels will be issued to the importer, with instructions for their use, which he is to send to the foreign shipper. The quantity of mailing labels issued will be sufficient for the foreign shipper to attach one to each parcel moved by mail. Such mailing labels will indicate to the postal and the plant quarantine officials that the movement is authorized under the conditions specified in the permit. Importations arriving by mail without labels will be subject to refusal of entry into the United States, or Interstate movement, by the inspector unless treated, at the expense of the owner, in a manner to remove danger of plant pest dissemination. The Director may issue mailing labels for movement into or through the United States from any place outside thereof, or from any Territory or possession into or through any other Territory or possession or the continental United States, of earth other than soil when the movement might otherwise be impeded because of the similarity to soil subject to this section.

§ 330.301 *Stone and quarry products from certain areas in Canada*. Stone and quarry products from areas in Canada infested with the gypsy moth may be moved from Canada into or through the United States only into or through areas regulated by the gypsy moth and brown-tail moth quarantine and regulations in §§ 301.45, 301.45-1 et seq. of this chapter; or into or through other areas in the United States under conditions paralleling the requirements of said quarantine and regulations for movement of stone

^{*}Section 106 of the Federal Plant Pest Act provides: "Any person who violates section 103 of this act, or any regulation promulgated under this act, or who forges, counterfeits, or without authority from the Secretary uses, alters, or defaces any permit or other document provided for by this act or the regulations thereunder, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$500, or by imprisonment not exceeding one year, or both."

and quarry products from said regulated areas into such other areas of the United States.

§ 330.302 *Domestic movements of earth (including soil), stone, etc.* The interstate movement from regulated areas in the Continental United States of earth (including soil), stone, quarry products, and similar substances is regulated in §§ 301.45, 301.48, 301.72, 301.77, 301.78, 301.79, 301.80, and 301.81 of this chapter and may be made only in accordance with the requirements of these sections. Any such movement of earth, stone, quarry products and similar substances which may hereafter be regulated in Part 301 of this chapter may likewise be made only in accordance with the requirements of said part. The interstate movement of such materials of United States origin, from any place in the Continental United States, is not regulated by this part.

SUBPART—GARBAGE

§ 330.400 *Garbage.* Garbage on or from any means of conveyance arriving in the United States from any place outside thereof, or arriving in the continental United States from any Territory or possession, or in any Territory or possession from any other Territory or possession, shall be subject to general surveillance by the inspectors to prevent the dissemination of plant pests. The Division will cooperate with other Federal, State, and municipal agencies in enforcing other statutes and regulations governing disposal of garbage to the end that such disposal shall be adequate to prevent the dissemination of plant pests. The inspectors, in maintaining surveillance over garbage movements and disposal, shall coordinate their activities with the activities of representatives of the other Federal, State, and local agencies also having jurisdiction over such garbage. Any additional requirements for the disposal of garbage arriving in the United States from any place outside thereof or in the continental United States from any Territory or possession or in any Territory or possession from any other Territory or possession, found necessary in order to prevent plant pest dissemination, may be prescribed in administrative instructions.

B. Part 324 entitled "Mollusks" is superseded by Part 330 as set forth above.

C. In addition, Parts 301 and 319 are amended in the following respects to conform them to the provisions in Part 330:

1. Sections 301.13-2 (a) (1), 301.13-14 (b), 301.45-3 (a), 301.48-3 (a), 301.52-3, 301.64-3, 301.72-3 (a), 301.76-3 (a), 301.77-3 (a), 301.78-3 (a), 301.79-3, 301.80-3, 301.81-3, and 319.37-25 are deleted.

2. Section 301.13 is amended by adding at the end thereof the following paragraph:

(d) Regulations governing the movement of live plant pests designated in this section are contained in Part 330 of this chapter.

3. Section 301.13-14 is amended to read as follows:

§ 301.13-14 *Shipments for experimental or other scientific purposes.* Articles subject to the requirements of the regulations in this subpart may be moved under this subpart for experimental or other scientific purposes on such conditions and under such safeguards as may be prescribed by the Director of the Plant Quarantine Division to carry out the purposes of this subpart. The container or, if there is none, the article itself shall bear, securely attached to the outside thereof, an identifying tag from the Plant Quarantine Division.

4. Sections 301.45-12, 301.48-10, 301.72-10, 301.76-10, 301.77-9, and 301.78-9 are amended, in each case, to read as follows:

Shipments for experimental or other scientific purposes. Articles subject to the requirements of the regulations in this subpart may be moved under this subpart for experimental or other scientific purposes on such conditions and under such safeguards as may be prescribed by the Director of the Plant Pest Control Division to carry out the purposes of this subpart. The container or, if there is none, the article itself shall bear, securely attached to the outside thereof, an identifying tag from the Plant Pest Control Division.

5. Section 301.45 is amended by changing the first sentence to read: "Pursuant to section 8 of the Plant Quarantine Act of August 20, 1912, as amended (7 U. S. C. 161), and after public hearing, it has been determined that it is necessary to quarantine the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont to prevent the further spread of the gypsy moth (*Porthetria dispar* L.) and the brown-tail moth (*Nygmia phaeorrhoea* Donovan), dangerous insects injurious to forest and shade trees and not heretofore widely prevalent or distributed within and throughout the United States, and said States have been and hereby are continued to be quarantined because of said insects, and under the authority of said Act supplemental regulations are prescribed in this subpart governing the movement of carriers of said insects."

6. Section 301.45 is further amended by deleting item (a) from the second sentence; by deleting the phrase "except live gypsy or browntail moths in any stage of development," from the second proviso; and by adding at the end of the section a new sentence to read: "Regulations governing the movement of live gypsy moths and brown-tail moths are contained in Part 330 of this chapter."

7. Section 301.48 is amended by changing the first sentence to read: "Pursuant to section 8 of the Plant Quarantine Act of August 20, 1912, as amended (7 U. S. C. 161), and after public hearing, it has been determined that it is necessary to quarantine the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia, and the District of Columbia, to prevent the spread of the Japanese beetle, a dangerous insect

injurious to cultivated crops and not heretofore widely prevalent or distributed within and throughout the United States, and said States and District have been and hereby are continued to be quarantined because of said insect, and under the authority of said Act supplemental regulations are prescribed in this subpart governing the movement of carriers of said insect."

8. Section 301.48 is further amended by adding at the end thereof a new sentence to read: "Regulations governing the movement of live Japanese beetles are contained in Part 330 of this chapter."

9. Section 301.52 is amended by changing the first sentence to read: "Pursuant to section 8 of the Plant Quarantine Act of August 20, 1912, as amended (7 U. S. C. 161), and after public hearing, it has been determined that it is necessary to quarantine the States of Arizona, Arkansas, Louisiana, New Mexico, Oklahoma, and Texas to prevent the spread of the pink bollworm, a dangerous insect injurious to cotton, okra, and kenaf, and not heretofore widely prevalent or distributed within and throughout the United States, and said States have been and hereby are continued to be quarantined because of said insect, and under the authority of said Act supplemental regulations are prescribed in this subpart governing the movement of carriers of said insect."

10. Section 301.52 is further amended by deleting the phrase "and other regulations in this subpart" in the fourth sentence and substituting therefor the word "regulations"; by deleting the phrase "except § 301.52-3," from the fifth sentence; and by deleting the last sentence and substituting therefor the following: "Regulations governing the movement of live pink bollworms are contained in Part 330 of this chapter."

11. Section 301.64 is amended by changing the first sentence to read: "Pursuant to section 8 of the Plant Quarantine Act of August 30, 1912, as amended (7 U. S. C. 161), and after public hearing, it has been determined that it is necessary to quarantine the State of Texas to prevent the spread of the Mexican fruit fly, a dangerous insect injurious to fruits and not heretofore widely prevalent or distributed within and throughout the United States, and said State has been and hereby is continued to be quarantined because of said insect, and under the authority of said Act supplemental regulations are prescribed in this subpart governing the movement of carriers of said insect."

12. Section 301.64 is further amended by deleting the phrase "and other regulations in this subpart" in the third sentence and substituting therefor the word "regulations"; by deleting the phrase "except § 301.64-3," from the fourth sentence; and by deleting the last sentence and substituting therefor the following: "Regulations governing the movement of live Mexican fruit flies are contained in Part 330 of this chapter."

13. Section 301.72 is amended by changing the first sentence to read: "Pursuant to section 8 of the Plant Quarantine Act of August 20, 1912, as amended (7 U. S. C. 161), and after public

hearing, it has been determined that it is necessary to quarantine the States of Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee to prevent the spread of introduced species of the genus *graphognathus*, commonly known as white-fringed beetles, dangerous insects injurious to cultivated crops and not heretofore widely prevalent or distributed within and throughout the United States, and said States have been and hereby are continued to be quarantined because of said insects, and under the authority of said Act supplemental regulations are prescribed in this subpart governing the movement of carriers of said insects."

14. Section 301.72 is further amended by deleting item (a) from the second sentence; by deleting the phrase "except live white-fringed beetles in any stage of development," from the second proviso; and by adding at the end of the section a new sentence to read: "Regulations governing the movement of live white-fringed beetles are contained in Part 330 of this chapter."

15. Section 301.76 is amended by changing the first sentence to read: "Pursuant to section 8 of the Plant Quarantine Act of August 20, 1912, as amended (7 U. S. C. 161), and after public hearing, it has been determined that it is necessary to quarantine the States of Arizona, California, and New Mexico to prevent the spread of the khapra beetle, a dangerous insect injurious to stored grain and not heretofore widely prevalent or distributed within and throughout the United States, and said States have been and hereby are continued to be quarantined because of said insect, and under the authority of said Act supplemental regulations are prescribed in this subpart governing the movement of carriers of said insect."

16. Section 301.76 is further amended by deleting from the second proviso the phrase "except live khapra beetles in any stage of development,"; and by adding at the end of the section a new sentence to read: "Regulations governing the movement of live khapra beetles are contained in Part 330 of this chapter."

17. Section 301.77 is amended by changing the first sentence to read: "Pursuant to section 8 of the Plant Quarantine Act of August 20, 1912, as amended (7 U. S. C. 161), and after public hearing, it has been determined that it is necessary to quarantine the States of Connecticut, New York, and West Virginia to prevent the spread of the European chafers, a dangerous insect injurious to pastures, lawns, and certain cultivated crops and not heretofore widely prevalent or distributed within and throughout the United States, and said States have been and hereby are continued to be quarantined because of said insect, and under the authority of said Act supplemental regulations are prescribed in this subpart governing the movement of carriers of said insect."

18. Section 301.77 is further amended by deleting from the second proviso the phrase "except live European chafers in any stage of development,"; and by adding at the end of the section a new sen-

tence to read: "Regulations governing the movement of live European chafers are contained in Part 330 of this chapter."

19. Section 301.78 is amended by changing the first sentence to read: "Pursuant to section 8 of the Plant Quarantine Act of August 20, 1912, as amended (7 U. S. C. 161), and after public hearing, it has been determined that it is necessary to quarantine the State of Florida to prevent the spread of the Mediterranean fruit fly, a dangerous insect injurious to fruits and vegetables and not heretofore widely prevalent or distributed within and throughout the United States, and said State has been and hereby is continued to be quarantined because of said insect, and under the authority of said Act supplemental regulations are prescribed in this subpart governing the movement of carriers of said insect."

20. Section 301.78 is further amended by deleting item (a) from the second sentence; by deleting the phrase "except live Mediterranean fruit flies in any stage of development," from the fourth sentence; and by adding at the end of the section a new sentence to read: "Regulations governing the movement of live Mediterranean fruit flies are contained in Part 330 of this chapter."

21. Section 301.79 is amended by changing the first sentence to read: "Pursuant to section 8 of the Plant Quarantine Act of August 20, 1912, as amended, and section 106 of the Federal Plant Pest Act (7 U. S. C. 161, 150ee), and after public hearing, it has been determined that it is necessary to quarantine the States of Arkansas, Kentucky, Mississippi, Missouri, North Carolina, and Tennessee to prevent the spread of the soybean cyst nematode (*Heterodera glycines* Ichinohe), which causes a dangerous disease of soybeans and certain other plants, and which has not heretofore been widely prevalent or distributed within and throughout the United States, and said States have been and hereby are continued to be quarantined because of said nematode, and under the authority of said Acts supplemental regulations are prescribed in this subpart governing the movement of carriers of said nematode."

22. Section 301.79 is further amended by deleting the phrase "and other regulations in this subpart" in the third sentence and substituting therefor the word "regulations"; by deleting the phrase "except § 301.79-3," from the fourth sentence; and by deleting the last sentence and substituting therefor a new sentence to read: "Regulations governing the movement of live soybean cyst nematodes are contained in Part 330 of this chapter."

23. Section 301.80 is amended by changing the first sentence to read: "Pursuant to section 8 of the Plant Quarantine Act of August 20, 1912, as amended, and section 106 of the Federal Plant Pest Act (7 U. S. C. 161, 150ee), and after public hearing, it has been determined that it is necessary to quarantine the States of North Carolina and South Carolina to prevent the spread of witchweed (*Striga* sp.), a parasitic plant which causes a dangerous disease of corn, sor-

ghum, and other crops of the grass family, and which has not heretofore been widely prevalent or distributed within and throughout the United States, and said States have been and hereby are continued to be quarantined because of said disease, and under the authority of said Acts supplemental regulations are prescribed in this subpart governing the movement of carriers of witchweed."

24. Section 301.80 is further amended by deleting the phrase "and other regulations in this subpart" in the third sentence and substituting therefor the word "regulations"; by deleting the phrase "except § 301.80-3," from the fourth sentence; and by deleting the last sentence and substituting therefor a new sentence to read: "Regulations governing the movement of live witchweed are contained in Part 330 of this chapter."

25. Section 301.81 is amended by changing the first sentence to read: "Pursuant to section 8 of the Plant Quarantine Act of August 20, 1912, as amended (7 U. S. C. 161), and after public hearing, it has been determined that it is necessary to quarantine the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, South Carolina, and Texas, to prevent the spread of the imported fire ant, a dangerous insect not heretofore widely prevalent or distributed within and throughout the United States, which is injurious to cultivated crops such as potatoes, peanuts, cabbage, egg plant, and okra; to germinating seeds such as corn seed; to grass and other plants of pasture land; and to other plants; and said States have been and hereby are continued to be quarantined because of said insect, and under the authority of said Act supplemental regulations are prescribed in this subpart governing the movement of carriers of said insect."

26. Section 301.81 is further amended by deleting the phrase "and other regulations in this subpart" in the fourth sentence and substituting therefor the word "regulations"; by deleting the phrase "§§ 301.81-3 and 301.81-10," from the fourth and fifth sentences; and by deleting the last sentence and substituting therefor a new sentence to read: "Regulations governing the movement of live imported fire ants are contained in Part 330 of this chapter."

27. Sections 301.52-4, 301.64-4, 301.79-4, 301.80-4, and 301.81-4 are amended by deleting the word "other" from the headings thereof, and §§ 301.72-3 (b), 301.77-3 (b), and 301.78-3 (b) are amended by deleting the phrase "other regulated articles;" from the headings thereof.

28. Sections 301.52 and 301.81 are amended by changing the portion of the second sentence preceding the semi-colon, in each case, to read: "Hereafter the following shall not be moved from the quarantined States into or through any other State, Territory, or District of the United States in manner or method or under conditions other than those prescribed in the regulations as from time to time amended."

29. Section 301.64 is amended by changing the portion of the second sentence preceding the semi-colon to read: "Hereafter the following shall not be moved from the quarantined State into

or through any other State, Territory or District of the United States in manner or method or under conditions other than those prescribed in the regulations as from time to time amended."

30. Sections 301.52-1 (p), 301.64-1 (f) and 301.81-1 (g) are amended in each case to read:

Moved (movement, move). Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved, interstate, directly or indirectly. "Movement" and "move" shall be construed accordingly.

31. Sections 301.52-1 (w), 301.64-1 (m), and 301.81-1 (n) are deleted; and §§ 301.52-1 (g), 301.64-1 (g), and 301.81-1 (h) are amended to read: "Interstate. From one State, Territory, or District of the United States into or through another."

32. Sections 301.38 and 301.63 are amended by adding at the end thereof in each case the following: "Regulations governing the movement of the organisms causing said disease are contained in Part 330 of this chapter. Applications for permits for the movement of said organisms may be made to the Director, Plant Pest Control Division, Agricultural Research Service, U. S. Department of Agriculture, Washington 25, D. C. in accordance with said part."

33. Sections 301.45, 301.48, 301.52, 301.64, 301.72, 301.76, 301.77, 301.78, 301.79, 301.80 and 301.81 are amended by adding at the end thereof in each case the following: "Applications for permits for movement of said pests may be made to the Director, Plant Pest Control Division, Agricultural Research Service, U. S. Department of Agriculture, Washington 25, D. C. in accordance with said part."

The purpose of the Federal Plant Pest Regulations set forth herein is to prevent the dissemination of plant pests into the United States or interstate. The purpose of the amendments of Parts 301 and 319 is to conform them to the procedures prescribed in said regulations.

Several of the regulations set forth above differ in phraseology from that originally proposed in the notice of rule making due to minor, nonsubstantive changes.

It is believed that the provisions herein that were not included in the notice of rule making will not be objectionable to affected persons and it does not appear that further public rule making procedure will make new information available to the Department. Therefore, it is found upon good cause under section 4 of the Administrative Procedure Act (5 U. S. C. 1003) that further notice of rule making and other public procedure on the provisions in question are impracticable and unnecessary.

The foregoing supersede, regulations, and amendments shall become effective November 24, 1958.

(Sec. 9: 37 Stat. 318, sec. 501, 65 Stat. 290, secs. 103, 106, 71 Stat. 32, 33; 7 U. S. C. 162, 5 U. S. C. 140, 7 U. S. C. 150bb, 150cc. Interpret or apply sec. 8, 37 Stat. 318, as amended, secs. 105, 107, 111, 71 Stat. 32, 34, 35; 7 U. S. C. 161, 150dd, 150ff, 141 note)

Done at Washington, D. C., this 21st day of October 1958.

[SEAL]

M. R. CLARKSON,
Acting Administrator,
Agricultural Research Service.

[F. R. Doc. 58-8940; Filed, Oct. 23, 1958;
8:57 a. m.]

PART 320—MEXICAN BORDER REGULATIONS MISCELLANEOUS AMENDMENTS

On July 4, 1958, there was published in the FEDERAL REGISTER (23 F. R. 5123) a notice of proposed rule making concerning the amendment of the regulations in Part 320 of Title 7 of the Code of Federal Regulations. After due consideration of all relevant matters presented, and under the authority conferred by the act of Congress approved January 31, 1942, entitled "An act to provide for regulating, inspecting, cleaning, and, when necessary, disinfecting railway cars, other vehicles, and other materials entering the United States from Mexico" (56 Stat. 49; 70 U. S. C. 149) and section 106 of the Federal Plant Pest Act (Title I, Pub. Law 85-36, 71 Stat. 33; 7 U. S. C. 150ee), Part 320 is hereby amended in the following respects:

1. Section 320.3 is amended by adding thereto the following new definition:

§ 320.3 *Definitions.* . . .

(h) *Soil.* The loose surface material of the earth in which plants grow, in most cases consisting of disintegrated rock with an admixture of organic material and soluble salts.

2. A new § 320.10 is added to read as follows:

§ 320.10 *Soil.* Soil may be imported, as such, from Mexico at any port on the Mexican border only as authorized under this section.

(a) *Permits.* The Director of the Plant Quarantine Division may issue permits for the importation of soil for research, analytical, religious, ceremonial, patriotic or similar purposes, or such other purposes as he shall deem consistent with the objectives of this part, specifying in the permit or in the related correspondence, the safeguards, including methods of treatment or other conditions, which he deems necessary for the purpose of preventing the introduction of insect pests and plant diseases.

(b) *Applications for permits.* Only persons resident in the United States may apply for permits to import soil from Mexico at a port on the Mexican border. Any such person contemplating such an importation shall first make application for a permit by using the form provided therefor by the Plant Quarantine Division or by submitting to the Division, in the form of a letter or other written communication, the following information: Origin of the shipment, destination, quantity, method of shipment, proposed port of first arrival in the United States, approximate date of arrival in the United States, intended use, measures to be employed to prevent danger of dissemination of insect pests and plant diseases, method of final disposition, and the number of parcels expected

to be moved. In acting upon the application for permit for such importation of soil, the Director will follow the procedures outlined in § 330.202 for the consideration of applications for permits to move plant pests, insofar as they are applicable.

(c) *Issuance of permits; special mailing labels for mail importations.* Upon the approval of an application for a permit to import soil from Mexico under this part, the permit will be issued, including any conditions which, in the opinion of the Director, are necessary in order to prevent the introduction of insect pests and plant diseases. The Director may require the applicant to agree in writing to the conditions prior to the issuance of the permit. The importer will receive with the permit information on the manner in which the importation is to be made. All containers are to be stoutly constructed so as to prevent breakage in transit and danger of dissemination of insect pests and plant diseases and shall be appropriately labeled as to contents. If the soil is imported by mail, special mailing labels will be issued to the importer, with instructions for their use, which he is to send to the foreign shipper. The quantity of mailing labels issued will be sufficient for the foreign shipper to attach one to each parcel forwarded by mail. Such mailing labels will indicate to the postal and the plant quarantine officials that the importation is authorized under the conditions specified in the permit. Importations arriving by mail without labels will be subject to refusal of entry into the United States by the inspector unless treated, at the expense of the owner, in a manner to remove danger of introduction of insect pests and plant diseases. The Director may issue mailing labels for importations into the United States of earth other than soil when the importation might otherwise be impeded because of similarity to earth subject to regulation under this section.

The purpose of the amendments is to regulate further the importation at Mexican border ports of soil from Mexico.

These amendments shall be effective November 24, 1958.

(56 Stat. 40, sec. 106, 71 Stat. 33; 7 U. S. C. 149, 150ee)

Done at Washington, D. C., this 21st day of October 1958.

[SEAL]

M. R. CLARKSON,
Acting Administrator,
Agricultural Research Service.

[F. R. Doc. 58-8939; Filed, Oct. 23, 1958;
8:56 a. m.]

[P. Q. 632]

PART 330—FEDERAL PLANT PEST REGULATIONS

ADMINISTRATIVE INSTRUCTIONS APPROVING PACKING MATERIALS FOR PLANT PESTS

On July 4, 1958, there was published in the FEDERAL REGISTER (23 F. R. 5123) a notice of proposed rule making concerning the issuance of administrative instructions approving certain materials

for use as packing in preparing plant pests for movement. After due consideration of all relevant matter presented, and under the authority contained in §§ 330.108 and 330.210 of the Federal Plant Pest Regulations (see F. R. Doc. 8840, *supra*), under sections 103 and 106 of the Federal Plant Pest Act of May 23, 1957 (Title I, Pub. Law 85-36, 71 Stat. 32, 33; 7 U. S. C. 150bb, 150ee), administrative instructions are hereby issued as follows to appear as § 330.210a in Part 330 under the heading "Federal Plant Pest Regulations," in Title 7, Chapter III, of the Code of Federal Regulations:

§ 330.210a *Administrative instructions listing approved packing materials for plant pests.* (a) The following materials are approved as packing materials for use with any shipment of plant pests in accordance with § 330.210:

- (1) Absorbent cotton or processed cotton padding free of cottonseed.
 - (2) Cellulose materials.
 - (3) Excelsior.
 - (4) Felt.
 - (5) Ground peat (peat moss).
 - (6) Paper or paper products.
 - (7) Phenolic resin foam.
 - (8) Sawdust.
 - (9) Sponge rubber.
 - (10) Thread waste; twine; or cord.
 - (11) Vermiculite.
- (b) Advance approval for the use of any other packing material for any specific movement should be obtained from the Director.

These administrative instructions shall be effective November 24, 1958.

(Secs. 103, 106, 71 Stat. 32, 33; 7 U. S. C. 150bb, 150ee)

Done at Washington, D. C., this 21st day of October 1958.

[SEAL] E. P. REAGAN,
Director,
Plant Quarantine Division.

[F. R. Doc. 58-8837; Filed, Oct. 23, 1958; 8:56 a. m.]

[P. Q. 633]

PART 330—FEDERAL PLANT PEST REGULATIONS

ADMINISTRATIVE INSTRUCTIONS EXEMPTING SOIL FROM CANADA FROM CERTAIN RESTRICTIONS

On July 4, 1958, there was published in the FEDERAL REGISTER (23 F. R. 5128) a notice of proposed rule making concerning the issuance of administrative instructions exempting soil from Canada from certain restrictions of the Federal Plant Pest Regulations. After due consideration of all relevant matter presented, and under the authority contained in §§ 330.108 and 330.300 of the Federal Plant Pest Regulations (see F. R. Doc. 8840, *supra*), under section 106 of the Federal Plant Pest Act of May 23, 1957 (Title I, Pub. Law 85-36, 71 Stat. 33; 7 U. S. C. 150ee), administrative instructions are hereby issued as follows to appear as § 330.300a in Part 330 under the heading "Federal Plant Pest Regula-

tions," in Title 7, Chapter III, of the Code of Federal Regulations:

§ 330.300a *Administrative instructions exempting soil from Canada from certain restrictions.* Soil of Canadian origin may be moved into or through the United States from Canada free from the permit requirements of § 330.300 and the release requirements of § 330.105 but subject to inspection under § 330.105 and disposal under § 330.106 if the inspection discloses any plant pest new to or not theretofore widely prevalent or distributed within and throughout the United States. Such soil is also subject to all applicable requirements under Part 319 of this chapter.

These administrative instructions shall be effective November 24, 1958.

(Sec. 106, 71 Stat. 33; 7 U. S. C. 150ee)

Done at Washington, D. C., this 21st day of October 1958.

[SEAL] E. P. REAGAN,
Director,
Plant Quarantine Division.

[F. R. Doc. 58-8838; Filed, Oct. 23, 1958; 8:56 a. m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

PART 958—IRISH POTATOES GROWN IN COLORADO

APPROVAL OF EXPENSES AND RATE OF ASSESSMENT

Notice of rule making regarding proposed expenses and rate of assessment, to be made effective under Marketing Agreement No. 97 and Order No. 58 (7 CFR Part 958), regulating the handling of Irish potatoes grown in the State of Colorado was published in the FEDERAL REGISTER October 1, 1958 (23 F. R. 7603). This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.). After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice, which proposals were adopted and submitted for approval by the area committee for Area No. 1, established pursuant to said marketing agreement and order, it is hereby found and determined that:

§ 958.229 *Expenses and rate of assessment.* (a) The reasonable expenses that are likely to be incurred by the area committee for Area No. 1, established pursuant to Marketing Agreement No. 97 and this part, to enable such committee to perform its functions pursuant to the provisions of aforesaid marketing agreement and order, during the fiscal period ending May 31, 1959, will amount to \$1,000.00.

(b) The rate of assessment for Area No. 1 to be paid by each handler, pursuant to Marketing Agreement No. 97 and this part, shall be one cent (\$0.01) per hundredweight of potatoes handled by

¹ Sod from Canada is regulated by § 319.37-5 of this chapter.

him as the first handler thereof during said fiscal period.

(c) The terms used in this section shall have the same meaning as when used in Marketing Agreement No. 97 and this part.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: October 20, 1958, to become effective 30 days after publication in the FEDERAL REGISTER.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable
Division, Agricultural Market-
ing Service.

[F. R. Doc. 58-8822; Filed, Oct. 23, 1958; 8:53 a. m.]

PART 959—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES IN CALIFORNIA AND IN ALL COUNTIES IN OREGON EXCEPT MALHEUR COUNTY

APPROVAL OF EXPENSES AND RATE OF ASSESSMENT

Notice of rule making regarding proposed expenses and rate of assessment, to be made effective under Marketing Agreement No. 114, as amended, and Order No. 59, as amended (7 CFR Part 959), regulating the handling of Irish potatoes grown in Modoc and Siskiyou Counties in California and in all counties in Oregon except Malheur County, was published in the FEDERAL REGISTER October 3, 1958 (23 F. R. 7675). This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.). After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice, which proposals were adopted and submitted for approval by the Oregon-California Potato Committee, established pursuant to said amended marketing agreement and order, it is hereby found and determined that:

§ 959.211 *Expenses and rate of assessment.* (a) The reasonable expenses that are likely to be incurred by the Oregon-California Potato Committee, established pursuant to Marketing Agreement No. 114, as amended, and this part as amended, to enable such committee to perform its functions pursuant to the provisions of aforesaid amended marketing agreement and order, during the fiscal period beginning July 1, 1958 and ending June 30, 1959, will amount to \$20,275.00.

(b) The rate of assessment to be paid by each handler, pursuant to Marketing Agreement No. 114, as amended, and this part, as amended, shall be three-eighths cent (\$0.00375) per hundredweight of potatoes handled by him as the first handler thereof during said fiscal period.

(c) The terms used in this section shall have the same meaning as when used in said marketing agreement, as amended, and order as amended.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: October 20, 1958, to become effective 30 days after publication in the FEDERAL REGISTER.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable
Division, Agricultural Market-
ing Service.

[F. R. Doc. 58-8823; Filed, Oct. 23, 1958;
8:53 a. m.]

**PART 1011—MILK IN THE MICHIGAN UPPER
PENINSULA MARKETING AREA**
ORDER REGULATING HANDLING

- Sec.
1011.0 Findings and determinations.
- DEFINITIONS**
- 1011.1 Act.
1011.2 Secretary.
1011.3 U. S. D. A.
1011.4 Person.
1011.5 Michigan Upper Peninsula market-
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AUTHORITY: §§ 1011.0 to 1011.101 issued
under sec. 5, 49 Stat. 753, as amended; 7
U. S. C. 608c.

§ 1011.0 *Findings and determina-
tions—(a) Findings upon the basis of the
hearing record.* Pursuant to the provi-
sions of the Agricultural Marketing
Agreement Act of 1937, as amended
(7 U. S. C. 601 et seq.), and the
applicable rules of practice and
procedure governing the formulation
of marketing agreements and marketing
orders (7 CFR Part 900), a public
hearing was held upon a proposed
marketing agreement and a proposed
order regulating the handling of milk in
the Michigan Upper Peninsula market-
ing area. Upon the basis of the evidence
introduced at such hearing and the rec-
ord thereof, it is found that:

(1) The said order and all of the
terms and conditions thereof, will tend
to effectuate the declared policy of the
Act;

(2) The parity prices of milk as de-
termined pursuant to section 2 of the Act
are not reasonable in view of the price of
feeds, available supplies of feeds, and
other economic conditions which affect
market supply and demand for milk in
the said marketing area, and the mini-
mum prices specified in the order are
such prices as will reflect the aforesaid
factors, insure a sufficient quantity of
pure and wholesome milk, and be in the
public interest;

(3) The said order regulates the han-
dling of milk in the same manner as,
and is applicable only to persons in the
respective classes of industrial or com-
mercial activity specified in a marketing
agreement upon which a hearing has
been held;

(4) All milk and milk products han-
dled by handlers, as defined in the order,
are in the current of interstate com-
merce or directly burden, obstruct, or
affect interstate commerce in milk or its
products; and

(5) It is hereby found that the nec-
essary expense of the market adminis-
trator for the maintenance and func-
tioning of such agency will require the
payment by each handler, as his pro rata
share of such expense, 5 cents per hun-
dredweight or such amount not to ex-
ceed 5 cents per hundredweight as the
Secretary may prescribe, with respect to
(a) All receipts within the month of
milk from producers, including milk of
such handler's own production; and (b)
Any other source milk allocated to Class
I pursuant to § 1011.46 (b) and the cor-
responding step of § 1011.47.

(b) *Additional findings.* It is neces-
sary in the public interest to make this
order partially effective not later than
November 1, 1958, and fully effective not
later than December 1, 1958.

The provisions of the said order are
known to handlers. Recommended de-
cisions of the Deputy Administrator of
the Agricultural Marketing Service were
issued May 28, 1958, and August 20, 1958,
and the decision of the Acting Secretary
containing all the provisions of this order
was issued September 15, 1958. The fact
that this order will constitute the origi-
nal imposition of a regulatory program
in this market makes it necessary that
the provisions other than those relating
to prices and payments to producers
should be put into effect prior to the
effective date of such pricing and pay-
ment provisions so that handlers may
have opportunity to make necessary ad-
justments in their operational and ac-
counting procedure to conform with all
provisions of the order. In view of the
foregoing, it is hereby found and de-
termined that good cause exists for mak-
ing this order partially effective Novem-
ber 1, 1958, and fully effective Decem-
ber 1, 1958, and that it would be contrary
to the public interest to delay the effective
date of this order for 30 days after its
publication in the FEDERAL REGISTER.
(See section 4 (c), Administrative Pro-
cedure Act, 5 U. S. C. 1001 et seq.)

(c) *Determinations.* It is hereby de-
termined that:

(1) The refusal or failure of handlers
(excluding cooperative associations
specified in section 8c (9) of the act) of
more than 50 percent of the milk, which
is marketed within the marketing area,
to sign a proposed marketing agreement,
tends to prevent the effectuation of the
declared policy of the act;

(2) The issuance of this order is the
only practical means pursuant to the de-
clared policy of the act of advancing the
interests of producers as defined in the
order; and

(3) The issuance of this order is ap-
proved or favored by at least three-
fourths of the producers who partici-
pated in a referendum and who during
the determined representative period
were engaged in the production of milk
for sale in the marketing area.

Order relative to handling. It is
therefore ordered, that on and after the
effective date hereof, the handling of
milk in the Michigan Upper Peninsula
marketing area shall be in conformity
to and in compliance with the following
terms and conditions:

DEFINITIONS

§ 1011.1 *Act.* "Act" means Public
Act No. 10, 73d Congress, as amended,
and as reenacted and amended by the
Agricultural Marketing Agreement Act
of 1937, as amended (7 U. S. C. 601
et seq.).

§ 1011.2 *Secretary.* "Secretary"
means the Secretary of Agriculture of
the United States or any other officer
or employee of the United States author-
ized to exercise the powers or to per-

form the duties of the Secretary of Agriculture.

§ 1011.3 *U. S. D. A.* "U. S. D. A." means the United States Department of Agriculture.

§ 1011.4 *Person.* "Person" means any individual, partnership, corporation, association, or any other business unit.

§ 1011.5 *Michigan Upper Peninsula marketing area.* (a) "Michigan Upper Peninsula marketing area" (hereinafter referred to as the "marketing area") means all the territory including all municipal corporations within the zones described below in this section.

(b) "Zone 1": Counties of Delta, Dickinson, Gogebic, Iron, Ontonagon, all in the State of Michigan; the town of Niagara and the village of Niagara, in Marinette County; the towns of Aurora and Florence, in Florence County, and the towns of Carey, Kimball, Oma, Pence, Saxon and the cities of Hurley and Montreal in Iron County, all in the State of Wisconsin.

(c) "Zone 2": Counties of Alger, Baraga, Chippewa, Houghton, Keweenaw, Luce, Mackinac, Marquette and Schoolcraft, all in the State of Michigan.

§ 1011.6 *Fluid milk product.* "Fluid milk product" means milk, skim milk, flavored milk, flavored milk drinks, buttermilk, half and half and cream (sweet or sour).

§ 1011.7 *Route.* "Route" means a delivery (including delivery by a vendor or sale from a plant or plant store) of any fluid milk product, other than a delivery to any milk processing plant.

§ 1011.8 *Fluid milk plant.* "Fluid milk plant" means the premises, buildings and facilities of any milk receiving, processing or packaging plant handling milk eligible for distribution in the marketing area as Grade A milk or conforming to the requirements of Michigan Act No. 169, Public Acts 1929, as amended:

(a) From which fluid milk products are disposed of during the month on routes in the marketing area except as provided in § 1011.81; or

(b) From which milk or skim milk is delivered to a plant(s) described in paragraph (a) of this section on 10 or more days in any of the months of July through December or on three or more days in any of the months of January through June.

§ 1011.9 *Handler.* "Handler" means a person who operates one or more fluid milk plants or any other plant from which fluid milk products are disposed of during the month on routes in the marketing area.

§ 1011.10 *Producer.* "Producer" means a person, other than a producer-handler, who produces milk in conformity with the sanitation requirements for Grade A milk of any duly constituted health authority, or in conformity with the requirements of Michigan Act No. 169, Public Acts 1929, as amended, which milk is:

(a) Received at a fluid milk plant; or
(b) Diverted from such plant for the account of a handler (milk so diverted

shall be deemed to have been received by the diverting handler at the fluid milk plant from which it was diverted).

§ 1011.11 *Producer-handler.* "Producer-handler" means a dairy farmer who distributes fluid milk products on a route in the marketing area but receives no fluid milk products during the month except his own production or from fluid milk plants.

§ 1011.12 *Producer milk.* "Producer milk" means milk received at a fluid milk plant directly from producers, or diverted to a nonfluid milk plant pursuant to § 1011.10.

§ 1011.13 *Other source milk.* "Other source milk" means all skim milk and butterfat contained in (or represented by):

(a) Receipts during the month of fluid milk products except: (1) Receipts from other fluid milk plants or (2) producer milk; and

(b) Products, other than fluid milk products, from any source (including those produced at the fluid milk plant) which are reprocessed or converted to another product in the fluid milk plant during the month.

§ 1011.14 *Cooperative association.* "Cooperative association" means any cooperative marketing association of producers, as defined in § 1011.10, which the Secretary determines after application by the association is qualified under provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act".

MARKET ADMINISTRATOR

§ 1011.20 *Designation.* The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal by the Secretary.

§ 1011.21 *Powers.* The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

§ 1011.22 *Duties.* The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including, but not limited to the following:

(a) Within 30 days following the date on which he enters upon his duties, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(c) Employ and fix the compensation of such persons as may be neces-

sary to enable him to administer its terms and provisions;

(d) Pay out of the funds provided by § 1011.71:

(1) The cost of his bond and of the bonds of his employees,

(2) His own compensation, and

(3) All other expenses, except those incurred under § 1011.72, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided in this part, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 10 days after the day upon which he is required to perform such acts, has not made (1) reports pursuant to §§ 1011.30 through 1011.33, or (2) payments pursuant to §§ 1011.70, 1011.71, and 1011.72;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(h) Audit records of all handlers or persons upon whose utilization the classification of skim milk and butterfat for each handler depends, to verify the reports and payments required pursuant to the provisions of this part; and

(i) Publicly announce the prices determined for each month as follows:

(1) On or before the 5th day of each month the minimum price for Class I milk pursuant to § 1011.51 and Class I butterfat differential pursuant to § 1011.54 (a), both for the current month; the minimum price for Class II milk pursuant to § 1011.52 and the Class II butterfat differential pursuant to § 1011.54 (b), both for the preceding month; and the minimum price for Class III milk pursuant to § 1011.53 and the Class III butterfat differential pursuant to § 1011.54 (b), both for the preceding month;

(2) On or before the 12th day of each month the uniform price for each handler for the preceding month, computed pursuant to § 1011.61 and the producer butterfat differential computed pursuant to § 1011.62.

REPORTS, RECORDS AND FACILITIES

§ 1011.30 *Monthly reports of receipts and utilization.* On or before the 5th day (exclusive of Sundays and holidays) of each month, each handler who operates fluid milk plant(s) shall report to the market administrator for the preceding month for each fluid milk plant, in the detail and on forms prescribed by the market administrator as follows:

(a) The quantities of butterfat and skim milk contained in or represented by:

(1) Producer milk,
(2) Fluid milk products received from other fluid milk plants,
(3) Other source milk, and
(4) Inventories of fluid milk products on hand at the end of each month;

RULES AND REGULATIONS

(b) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (a) of this section; and

(c) Such other information with respect to sources and disposition as the market administrator may prescribe.

§ 1011.31 *Payroll reports.* On or before the 20th day of each month each handler operating fluid milk plant(s) shall report his producer payroll for each fluid milk plant for the preceding month which shall show:

(a) The pounds of milk received from each producer and the percentage of butterfat contained therein;

(b) The date and net amount of payment to such producer, or to a cooperative association for such producer's milk, with the price, deductions and charges involved and the nature of each.

§ 1011.32 *Producer-handler reports.* Each producer-handler shall make reports at such time and in such manner as the market administrator may request.

§ 1011.33 *Exempt handler reports.* Each handler exempt pursuant to §§ 1011.81 and 1011.82 shall report to the market administrator his disposition of fluid milk products on routes within the marketing area at such time and in such manner as the market administrator shall prescribe.

§ 1011.34 *Records and facilities.* Each handler shall maintain and make available to the market administrator, during the usual hours of business, such accounts and records of all of his operations and such facilities as are necessary to verify reports or to ascertain the correct information with respect to:

(a) The receipts and utilization or disposition of all skim milk and butterfat received, including all milk products received and disposed of in the same form;

(b) The weights and tests for butterfat, skim milk and other content of all milk and milk products handled;

(c) Inventories of all dairy products on hand at the beginning and end of each month; and

(d) Payments to producers and cooperative associations.

§ 1011.35 *Retention of records.* All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided*, That if within such three year period, the market administrator notifies a handler in writing that the retention of such books and records, or of specified books and records is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice, the handler shall retain such books and records until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 1011.40 *Skim milk and butterfat to be classified.* All skim milk and butter-

fat required to be reported pursuant to § 1011.30 shall be classified (separately as skim milk and butterfat), pursuant to §§ 1011.41 through 1011.45.

§ 1011.41 *Classes of utilization.* Subject to the conditions set forth in §§ 1011.42 and 1011.43, the classes of utilization shall be:

(a) Class I utilization shall be all skim milk and butterfat:

(1) Disposed of in the form of fluid milk products, except those classified pursuant to paragraph (c) (2) of this section; and

(2) Not accounted for as Class II or Class III utilization.

(b) Class II utilization shall be all skim milk and butterfat:

(1) Used to produce any product other than those specified in paragraphs (a) or (c) of this section; and

(2) In inventories of fluid milk products on hand at the end of the month.

(c) Class III utilization shall be all skim milk and butterfat:

(1) Used to produce butter, nonfat dry milk or cheese in any form except cottage cheese;

(2) In skim milk disposed of for livestock feed or dumped subject to prior notification to and verification (at his discretion) by the market administrator;

(3) In shrinkage of skim milk and butterfat allocated to milk received from producers, but not to exceed 2 percent of such receipts; and

(4) In shrinkage of other source milk.

§ 1011.42 *Shrinkage.* (a) When producer milk is utilized in conjunction with other source milk, the shrinkage shall be allocated pro rata between the receipts of skim milk and butterfat in producer milk and other source milk.

(b) Producer milk transferred by a handler to another handler without first having been received in the transferor handler's plant shall be included in the receipts at the plant of the transferee handler for the purpose of computing his shrinkage and shall be excluded at the plant of the transferor handler in computing his shrinkage.

§ 1011.43 *Transfers.* Skim milk and butterfat transferred or diverted as milk, skim milk or cream in bulk form from a fluid milk plant to:

(a) The fluid milk plant of another handler shall be classified at the utilization indicated by the operators of both plants in their reports submitted pursuant to § 1011.30, otherwise as Class I utilization, subject in either event to the following conditions:

(1) The receiving plant has utilization in such class of an equivalent amount of skim milk and butterfat, respectively, and

(2) Such skim milk and butterfat shall be classified so as to allocate to producer milk the greatest possible total Class I utilization in the two plants;

(b) A plant operated by a producer-handler or a handler exempt pursuant to § 1011.81, shall be Class I utilization; and

(c) A nonfluid milk plant (except as specified in paragraph (b) of this section) shall be Class I utilization unless the following conditions apply:

(1) Utilization in another class is claimed by the transferring handler in his report submitted pursuant to § 1011.30 for the month,

(2) Class I utilization in the nonfluid milk plant does not exceed the receipts of skim milk and butterfat in milk received during the month from dairy farmers who the market administrator determines are the regular source of supply for fluid disposition of such plant. If Class I utilization exceeds such receipts, the skim milk and butterfat transferred shall be Class I to the extent of such excess, and

(3) The operator of the nonfluid milk plant maintains books and records which are made available if requested by the market administrator and which are adequate for the verification of such utilization.

§ 1011.44 *Responsibility of handlers.* All skim milk and butterfat shall be classified as Class I utilization unless the handler who first received such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

§ 1011.45 *Computation of skim milk and butterfat in each class.* For each month the market administrator shall correct for mathematical and obvious errors the monthly report submitted by each handler and compute the total pounds of skim milk and butterfat respectively, in Class I, Class II and Class III utilization for such handler: *Provided*, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water normally associated with such solids in the form of whole milk.

§ 1011.46 *Allocation of butterfat classified.* The pounds of butterfat remaining after making the following computations shall be the pounds in each class allocated to milk received from producers:

(a) Subtract from the total pounds of butterfat in Class III utilization, the pounds of butterfat shrinkage allowed pursuant to § 1011.41 (c) (3);

(b) Subtract from the pounds of butterfat remaining in each class, in series beginning with the lowest-priced utilization, the pounds of butterfat in other source milk received from a plant(s) other than those subject to another marketing agreement or order issued pursuant to the act;

(c) Subtract from the pounds of butterfat remaining in each class, in series beginning with the lowest-priced utilization, the pounds of butterfat in other source milk received from a plant subject to another marketing agreement or order issued pursuant to the act;

(d) Subtract from the pounds of butterfat remaining in Class II milk and Class I milk, in series beginning with Class II, the pounds of butterfat contained in inventory of fluid milk products on hand at the beginning of the month;

(e) Subtract from the remaining pounds of butterfat in each class the

pounds of butterfat received from fluid milk plants of other handlers according to the classification established pursuant to §§ 1011.41 and 1011.43 (a);

(f) Add to the remaining pounds of butterfat in Class III utilization the pounds subtracted pursuant to paragraph (a) of this section; and

(g) If the remaining pounds of butterfat in all classes exceed the pounds of butterfat in milk received from producers, subtract such overage from the remaining pounds of butterfat in each class in series, beginning with the lowest-priced utilization.

§ 1011.47 *Allocation of skim milk classified.* Allocate the pounds of skim milk in each class to milk received from producers in the same manner as that prescribed for butterfat in § 1011.46.

§ 1011.48 *Computation of total producer milk in each class.* The amounts computed pursuant to §§ 1011.46 and 1011.47 will be combined into one total for each class and the weighted average butterfat content of producer milk in each class will be determined.

MINIMUM PRICES

§ 1011.50 *Basic formula price.* The basic formula price shall be the higher of the prices computed pursuant to paragraphs (a) and (b) of this section:

(a) The average of the basic or field prices per hundredweight reported to have been paid, or to be paid, for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the U. S. D. A.:

Present Operator and Location

Borden Co., Mt. Pleasant, Mich.
Borden Co., New London, Wis.
Borden Co., Orfordville, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Sparta, Mich.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price per hundredweight computed from the following formula:

(1) Multiply by 4.24 the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade AA (93-score) bulk creamery butter per pound at Chicago, as reported by the U. S. D. A., during the month: *Provided*, That if no price is reported for Grade AA (93-score) butter, the highest of the prices reported for Grade A (92-score) butter for that day shall be used in lieu of the price for Grade AA (93-score) butter.

(2) Multiply by 8.2 the weighted average of carlot prices per pound for spray process nonfat dry milk, for human consumption, f. o. b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding delivery period through the 25th day of the current delivery period, by the U. S. D. A.; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph subtract 75.2 cents and adjust to the nearest full cent.

§ 1011.51 *Class I milk price.* Subject to the provisions of § 1011.54 the minimum price to be paid by each handler for milk received at his fluid milk plant from producers or the fluid milk plant of a cooperative association during the month and utilized as Class I milk during the 18 month period following the effective date of this part shall be the basic formula price for the preceding month, plus the applicable amounts specified below for the marketing area zone in which such plant is located. For plants located outside the marketing area and west of Lake Michigan the price (subject to § 1011.55) shall be that specified for Zone 1. For plants located outside the marketing area and east of Lake Michigan the price (subject to § 1011.55) shall be that specified for Zone 2.

Zone	Months of March through June	Months of January February and December	Months of July through November
1.....	\$0.75	\$0.95	\$1.15
2.....	.95	1.15	1.35

§ 1011.52 *Class II milk price.* Subject to the provisions of § 1011.54, the minimum price to be paid by each handler for milk received at his fluid milk plant from producers or from the fluid milk plant of a cooperative association, during the month and utilized as Class II milk shall be the basic formula price.

§ 1011.53 *Class III milk price.* Subject to the provisions of § 1011.54 the minimum price per hundredweight to be paid by each handler for milk received at his fluid milk plant from producers or the fluid milk plant of a cooperative association during the month and utilized as Class III milk shall be the price computed pursuant to § 1011.50 (b) less ten cents.

§ 1011.54 *Handler butterfat differential.* If the average butterfat test of Class I milk, Class II milk or Class III milk as computed pursuant to § 1011.48 is more or less than 3.5 percent, there shall be added to, or subtracted from, as the case may be, the price for such class of utilization, for each one-tenth of one percent that such average butterfat test is above or below 3.5 percent, a butterfat differential computed by multiplying the simple average, as computed by the market administrator, of the daily wholesale selling price per pound (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter at Chicago as reported by the U. S. D. A. during the month specified below by the applicable factor listed, and rounding to the nearest one-tenth cent:

(a) For Class I milk, multiply such price for the preceding month by 0.125;

(b) For Class II and Class III milk, multiply such price for the current month by 0.115.

§ 1011.55 *Handler location adjustments.* (a) For milk received at a fluid milk plant located outside the marketing area, west of Lake Michigan and more than 50 miles from the nearer of the City Hall in Ironwood, Michigan, or the City Hall in Iron Mountain, Michigan, the applicable Zone 1 price for Class I milk shall be reduced 10 cents, plus 2 cents for each 20 miles or fraction thereof in excess of 70 miles.

(b) For milk received at a fluid milk plant located outside the marketing area, east of Lake Michigan, and more than 50 miles from the City Hall in St. Ignace, Michigan the applicable Zone 2 price for Class I milk shall be reduced 10 cents, plus 2 cents for each 20 miles or fraction thereof in excess of 70 miles.

(c) Any distance used to determine location adjustments shall be the shortest hard surfaced highway distance as determined by the market administrator.

§ 1011.56 *Equivalent price provision.* Whenever the provisions of this part require the market administrator to use a specific price (or prices) for milk or any milk product for the purpose of determining minimum class prices or for any other purpose and the specified price is not reported or published, the market administrator shall use a price determined by the Secretary to be equivalent to or comparable with, the price specified.

HANDLER'S OBLIGATION AND UNIFORM PRICE

§ 1011.60 *Value of producer milk.* The value of producer milk received by each handler at fluid milk plant(s) shall be computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1011.48, by the applicable respective class prices (adjusted pursuant to §§ 1011.54 and 1011.55), and add together the resulting amounts;

(b) Add the amounts computed by multiplying the quantity of overage assigned to each class pursuant to § 1011.46 (g) and the corresponding step of § 1011.47 by the applicable class price;

(c) Add the amount obtained in multiplying by the difference between the Class II price for the preceding month and the Class I price for the current month the lesser of:

(1) The hundredweight of milk subtracted from Class I pursuant to § 1011.46 (d) and the corresponding step of § 1011.47; or

(2) The hundredweight of producer milk classified as Class II, during the preceding month; and

(d) Add or subtract, as the case may be, the amount necessary to correct errors in receipts or utilization for previous months as disclosed by audit by the market administrator.

§ 1011.61 *Computation of uniform price.* For each month the market administrator shall compute for each handler a "uniform price" per hundredweight of producer milk of 3.5 percent butterfat content delivered to fluid milk plants of such handler as follows:

(a) From the value of milk computed for such handler pursuant to § 1011.60, subtract, if the weighted average butter-

fat test of all milk represented by such value is greater than 3.5 percent or add, if the weighted average butterfat test of such milk is less than 3.5 percent an amount computed by multiplying the total pounds of butterfat represented by the difference of such weighted average butterfat test from 3.5 percent by the butterfat differential computed pursuant to § 1011.62 multiplied by 10;

(b) Adjust the resulting amount by the sum of money used in adjusting the uniform price, pursuant to paragraph (c) of this section for the previous month to the nearest cent;

(c) Except as provided in paragraph (d) of this section, divide the result by the total hundredweight of producer milk represented by the amount computed pursuant to § 1011.60 (a) and adjust the resulting figure to the nearest cent. The "uniform price" so computed shall be that applicable to milk delivered to the fluid milk plant(s) of a handler at whose plant or plants a single Class I price is applicable pursuant to §§ 1011.51 and 1011.55;

(d) For each handler operating two or more fluid milk plants at which different Class I prices are applicable pursuant to §§ 1011.51 and 1011.55, the value of milk used in the computation provided in paragraph (c) of this section shall first be further adjusted by adding the value of all applicable producer location adjustments pursuant to § 1011.63. The uniform price as computed shall be that applicable at the plant or plants of such handler at which the highest Class I price is applicable.

§ 1011.62 *Producer butterfat differential.* The applicable uniform prices to be paid pursuant to § 1011.70 to producers delivering milk to each handler shall be increased or decreased for each one-tenth of one percent which the butterfat content of his milk is above or below 3.5 percent, respectively, by a butterfat differential equal to the average of the butterfat differentials determined pursuant to paragraphs (a) and (b) of § 1011.54, weighted by the pounds of butterfat in producer milk used by such handler in each class and the result rounded to the nearest tenth of a cent.

§ 1011.63 *Producer location adjustments.* In making payments pursuant to § 1011.70 to producers or a cooperative association for milk for which a uniform price was computed pursuant to § 1011.61 (d) such uniform price for milk received at a plant at which a lesser Class I price is applicable than at the plant for which the uniform price is computed shall be reduced by an amount equal to the difference between the applicable Class I prices.

§ 1011.64 *Notification.* On or before the 12th day after the end of each month, the market administrator shall mail to each handler, at his last known address a statement showing for such month:

(a) The amount and value of his producer milk in each class;

(b) The uniform price applicable at each fluid milk plant of such handler pursuant to §§ 1011.61 and 1011.63 and the butterfat differential computed pursuant to § 1011.62; and

(c) The amounts to be paid by such handler pursuant to §§ 1011.71 and 1011.72.

PAYMENT FOR MILK

§ 1011.70 *Time and method of payment.* (a) Except as provided in paragraph (b) or (c) of this section, on or before the 15th day after the end of each month each handler who received milk from producers shall pay for milk received during such month to each producer for milk received from him the uniform price as provided in § 1011.61 adjusted by the butterfat differential pursuant to § 1011.62 and the location adjustment pursuant to § 1011.63.

(b) (1) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any claim on the part of the association, each handler shall pay to the cooperative association on or before the 13th day of each month, in lieu of payments pursuant to paragraph (a) of this section, an amount equal to the gross sum due for all milk received from certified members, less amount owing by each member-producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer and submit to the cooperative association on or before the 13th day of each month, written information which shows for each such member-producer:

(i) The total pounds of milk received from him during the preceding month,

(ii) The total pounds of butterfat contained in such milk,

(iii) The number of days on which milk was received, and

(iv) The amounts withheld by the handler in payment for supplies sold.

The foregoing payment and submission of information shall be made with respect to milk of each producer whom the cooperative association certifies is a member, which is received on and after the first day of the month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association.

(2) A copy of each such request, promise to reimburse, and a certified list of members shall be filed simultaneously with the market administrator by the association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, shall be made by written notice to the market administrator, and shall be subject to his determination.

(c) Each handler shall make payment to a cooperative association for milk received from the fluid milk plant of such cooperative association on or before the 10th day after the end of the month in which it was received, at not less than the applicable class prices.

§ 1011.71 *Expense of administration.* As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 13th day after the end of each month, 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as the Secretary may prescribe with respect to:

(a) All receipts within the month of milk from producers, including milk of such handler's own production; and

(b) Any other source milk allocated to Class I pursuant to § 1011.46 (b) and the corresponding step of § 1011.47.

§ 1011.72 *Marketing services.* (a) Except as set forth in paragraph (b) of this section, each handler, in making payments pursuant to § 1011.70 for milk received from each producer (excluding milk of such handler's own production) at a plant not operated by a cooperative association of which such producer is a member, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as the Secretary may prescribe, and on or before the 13th day after the end of each month shall pay such deductions to the market administrator. Such monies shall be used by the market administrator to verify weights, samples and tests of milk received from producers and to provide producers with market information, such services to be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers whose milk is received at a fluid milk plant not operated by a cooperative association of which such producers are members, and for whom a cooperative association is actually performing the services described in paragraph (a) of this section, as determined by the Secretary, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from payments required pursuant to § 1011.70 as may be authorized by such producers, and pay such deductions on or before the 13th day after the end of the month to the cooperative association rendering such services of which such producers are members.

§ 1011.73 *Errors in payment.* Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in monies due:

(a) To the market administrator from such handler,

(b) To such handler from the market administrator, or

(c) To any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any such amount due; and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred, following the 5th day after such notice.

§ 1011.74 *Overdue accounts.* Any unpaid obligation of a handler or of the market administrator pursuant to §§ 1011.71, 1011.72 and 1011.73 shall be

increased one-half of one percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

§ 1011.75 Termination of obligations. The provisions of this section shall apply to any obligations under this part for the payment of money irrespective of when such obligation arose.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the month during which the market administrator receives the handler's report of utilization of the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and
- (3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producer(s) or association or, if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the month during which the payment (including deduction or set off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c (15) (A) of the act, a petition claiming such money.

APPLICATION OF PROVISIONS

§ 1011.80 Producer-handler exemption. A producer-handler shall be exempt from all provisions of this part except §§ 1011.32, 1011.34 and 1011.35.

§ 1011.81 Exempt handler. A handler who operates a fluid milk plant, of the type specified in § 1011.8 (a), located outside the marketing area from which an average of less than 600 pounds of fluid milk products per day are disposed of during the month in the marketing area on route(s), shall be exempt from all provisions of this part except §§ 1011.33 through 1011.35.

§ 1011.82 Handlers subject to other Federal orders. The provisions of this part shall not apply to a handler with respect to the operation of a fluid milk plant during any month in which the milk at such plant would be subject to the classification, pricing and payment provisions of another marketing agreement or order issued pursuant to the Act and the disposition of fluid milk products in the other Federal marketing area exceeds that in the Michigan Upper Peninsula marketing area: *Provided*, That the operator of a fluid milk plant which is exempted from the provisions of this part pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 1011.90 Effective time. The provisions of this part, or any amendment to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 1011.91 Suspension or termination. The Secretary shall, whenever he finds that this part, or any provision of this part, obstructs or does not tend to effectuate the declared policy of the act, terminate or suspend the operation of this part or any such provision of this part.

§ 1011.92 Continuing obligation. If upon the suspension or termination of any or all provisions of this part, there are any obligations thereunder the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 1011.93 Liquidation. Under the suspension or termination of the provisions of this part, except this section, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a

liquidating agent is so designated all assets, books, and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers, in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1011.100 Agents. The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 1011.101 Separability of provisions. If any provision of this part, or the application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Issued at Washington, D. C. this 21st day of October, 1958, to be effective as follows:

Sections 1011.0 to 1011.22 (h), §§ 1011.30 to 1011.48 and §§ 1011.80 to 1011.101, shall be effective November 1, 1958 and all of the remaining provisions shall be effective December 1, 1958.

[SEAL]

TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 58-8832; Filed, Oct. 23, 1958; 8:55 a. m.]

PART 1016—MILK IN THE NORTHEASTERN WISCONSIN MARKETING AREA

ORDER REGULATING HANDLING

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AUTHORITY: §§ 1016.0 to 1016.101 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c.

§ 1016.0 *Findings and determinations*—(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed marketing agreement and a proposed order regulating the handling of milk in the Northeastern Wisconsin marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which

affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest;

(3) The said order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in this order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such amount not to exceed 5 cents per hundredweight as the Secretary may prescribe, with respect to (a) all receipts within the month of milk from producers, including milk of such handler's own production; (b) any other source milk allocated to Class I pursuant to § 1016.46 (b) and the corresponding step of § 1016.47; and (c) the applicable amount specified in § 1016.83 (a) (2) or (b) (2).

(b) *Additional findings.* (1) It is necessary in the public interest to make this order partially effective not later than November 1, 1958, and fully effective not later than December 1, 1958.

(2) The provisions of the said order are known to handlers. Recommended decisions of the Deputy Administrator of the Agricultural Marketing Service were issued May 28, 1958, and August 20, 1958, and the decision of the Acting Secretary containing all the provisions of this order was issued September 15, 1958. The fact that this order will constitute the original imposition of a regulatory program in this market makes it necessary that the provisions other than those relating to prices and payments to producers should be put into effect prior to the effective date of such pricing and payment provisions so that handlers may have opportunity to make necessary adjustments in their operational and accounting procedure to conform with all provisions of the order. In view of the foregoing it is hereby found and determined that good cause exists for making this order partially effective November 1, 1958, and fully effective December 1, 1958, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (See section 4 (c), Administrative Procedure Act, 5 U. S. C. 1001 et seq.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c (9) of the act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement,

tends to prevent the effectuation of the declared policy of the act;

(2) The issuance of this order is the only practical means pursuant to the declared policy of the act of advancing the interests of producers as defined in the order; and

(3) The issuance of this order is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Northeastern Wisconsin marketing area shall be in conformity to, and in compliance with, the following terms and conditions:

DEFINITIONS

§ 1016.1 *Act.* "Act" means Public Act No. 10, 73d Congress as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

§ 1016.2 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the United States authorized to exercise the powers or to perform the duties of the Secretary of Agriculture.

§ 1016.3 *U. S. D. A.* "U. S. D. A." means the United States Department of Agriculture.

§ 1016.4 *Person.* "Person" means any individual, partnership, corporation, association, or any other business unit.

§ 1016.5 *Northeastern Wisconsin marketing area.* The Northeastern Wisconsin marketing area, hereinafter referred to as the "marketing area", means all territory within (a) the counties of Brown, Calumet, Kewaunee, Langlade, Lincoln, Manitowoc, Oneida, Outagamie, Portage, Shawano (exclusive of the Menominee Indian Reservation), Sheboygan, Vilas, Waupaca and Winnebago, all in Wisconsin, including all towns, villages and cities; (b) the County of Fond du Lac, Wisconsin, exclusive of the towns of Alto, Ashford, Auburn, Byron, Eden, Oakfield, Osceola and Waupun, the villages of Campbellsport, Eden and Oakfield, and the city of Waupun; (c) the city of Sturgeon Bay in Door County, Wisconsin; (d) the towns of Bergen, Berlin, Bevent, Easton, Elderon, Franzen, Guenther, Harrison, Hewitt, Knowlton, Kronenwetter, Maine, Marathon, Mosinee, Norrie, Plover, Reid, Rib Mountain, Ringle, Stettin, Texas, Wausau and Weston, the villages of Brokaw, Elderon, Hatley, Marathon and Rothschild, and the cities of Mosinee Schofield and Wausau, all in Marathon County, Wisconsin; (e) the town of Peshtigo and the cities of Marinette and Peshtigo in Marinette County, Wisconsin; (f) the cities of Gillett, Oconto and Oconto Falls in Oconto County, Wisconsin; (g) the towns of Cranmoor, Grand Rapids, Port Edwards, Rudolph, Saratoga and Seneca, the villages of Biron and Port Edwards, and the cities of Nekoosa and Wisconsin

Rapids in Wood County, Wisconsin; and (h) the city of Menominee in Menominee County, Michigan.

§ 1016.6 *Fluid milk product*. "Fluid milk product" means milk, skim milk, flavored milk, flavored milk drinks, buttermilk, half and half and cream (sweet or sour).

§ 1016.7 *Route*. "Route" means a delivery (including delivery by a vendor or sale from a plant or plant store) of any fluid milk product, other than a delivery to any milk processing plant.

§ 1016.8 *Pool plant*. "Pool Plant" means any milk plant approved by a duly constituted authority for the handling of milk to be labeled Grade A, except as provided in §§ 1016.80, 1016.81 and 1016.82:

(a) At which milk is processed or packaged and from which during the month:

(1) Disposition on routes in the marketing area of fluid milk products labeled Grade A is 20 percent or more of receipts of Grade A milk from dairy farmers, and

(2) Total disposition on routes of fluid milk products labeled Grade A is 50 percent or more of receipts of Grade A milk from dairy farmers and other milk plants; or

(b) At which milk eligible for distribution as Grade A milk is received from dairy farmers and from which during the month 50 percent or more of such receipts is moved to a plant described in paragraph (a) of this section. Any such receiving plant that was a pool plant during each of the months of August through November immediately preceding shall continue to be a pool plant for each of the succeeding months of December through July unless written request to the contrary is filed with the market administrator on or before the first day of any such month.

§ 1016.9 *Handler*. "Handler" means (a) the operator of a pool plant in his capacity as such; (b) the operator of any other plant from which fluid milk products labeled Grade A are disposed of during the month on routes in the marketing area; or (c) a cooperative association with respect to milk of producers diverted for the account of such association from a pool plant to a non-pool plant.

§ 1016.10 *Producer*. (a) "Producer" means a person, other than a producer-handler, who produces Grade A milk in conformity with the sanitation requirements of any duly constituted Federal, state, county, or municipal authority, whose milk is received at a pool plant. "Producer" shall also include any such person with respect to milk diverted from a pool plant to a nonpool plant for the account of a handler or cooperative association. Milk so diverted shall be deemed to have been received at the pool plant from which diverted, if for the account of the operator of such plant, or at an identical location if for the account of a cooperative association through diversion from the pool plant of another handler.

(b) During the months of March, April, May and June "producer" shall

not include any such person whose milk is received or diverted from a farm from which a base applicable for the current year was earned under the provisions of either Federal Order No. 41 or Federal Order No. 7 by delivery to a plant subject to such order operated by the handler, an affiliate of such handler or any person who controls or is controlled by such handler.

§ 1016.11 *Producer-handler*. "Producer-handler" means a dairy farmer who distributes fluid milk products on a route in the marketing area, but receives no fluid milk products during the month except his own production or by transfer from pool plants.

§ 1016.12 *Producer milk*. "Producer milk" means milk received at a pool plant directly from producers, or diverted to a nonpool plant pursuant to § 1016.10.

§ 1016.13 *Other source milk*. "Other source milk" means all skim milk and butterfat contained in (or represented by):

(a) Receipts during the month of fluid milk products except

(1) Receipts from other pool plants or

(2) Producer milk; and

(b) Products, other than fluid milk products, from any source (including those produced at the pool plant) which are reprocessed or converted to another product in the pool plant during the month.

§ 1016.14 *Cooperative Association*. "Cooperative Association" means any cooperative marketing association of producers, as defined in § 1016.10, which the Secretary determines after application by the association is qualified under provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act."

MARKET ADMINISTRATOR

§ 1016.20 *Designation*. The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal by the Secretary.

§ 1016.21 *Powers*. The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

§ 1016.22 *Duties*. The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including, but not limited to the following:

(a) Within 30 days following the date on which he enters upon his duties, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(c) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(d) Pay out of the funds provided by § 1016.74:

(1) The cost of his bond and of the bonds of his employees,

(2) His own compensation, and

(3) All other expenses, except those incurred under § 1016.75, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided in this part, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 10 days after the day upon which he is required to perform such acts, has not made (1) reports pursuant to §§ 1016.30 through 1016.33, or (2) payments pursuant to §§ 1016.70 through 1016.76;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(h) Audit records of all handlers or persons upon whose utilization the classification of skim milk and butterfat for each handler depends, to verify the reports and payments required pursuant to the provisions of this part; and

(i) Publicly announce the prices determined for each month as follows:

(1) On or before the 5th day of each month the minimum price for Class I milk pursuant to § 1016.51 and the Class I butterfat differential pursuant to § 1016.54 (a), both for the current month; the minimum price for Class II milk pursuant to § 1016.52 and the Class II butterfat differential pursuant to § 1016.54 (b), both for the preceding month; and the minimum price for Class III milk pursuant to § 1016.53 and the Class III butterfat differential pursuant to § 1016.54 (b), both for the preceding month;

(2) On or before the 14th day of each month the uniform price for the preceding month, computed pursuant to § 1016.61 and the producer butterfat differential computed pursuant to § 1016.62.

REPORTS, RECORDS AND FACILITIES

§ 1016.30 *Monthly reports of receipts and utilization*. On or before the 5th day (exclusive of Sundays and holidays) of each month, each handler who operates pool plants, each cooperative association that is a handler pursuant to § 1016.9 (c) and each handler whose obligation is computed pursuant to § 1016.83 shall report to the market administrator for the preceding month for each pool

plant, in the detail and on forms prescribed by the market administrator as follows:

(a) The quantities of butterfat and skim milk contained in or represented by:

(1) Producer milk, or receipts from dairy farmers producing Grade A milk,
(2) Fluid milk products received from other pool plants,

(3) Other source milk, and
(4) Inventories of fluid milk products on hand at the end of each month;

(b) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (a) of this section; and

(c) Such other information with respect to sources and disposition as the market administrator may prescribe.

§ 1016.31 Payroll reports. On or before the 25th day of each month each handler operating a pool plant or receiving Grade A milk from dairy farmers shall report his producer payroll for each pool plant for the preceding month which shall show:

(a) The pounds of milk received from each producer or dairy farmer producing Grade A milk and the percentage of butterfat contained therein;

(b) The date and net amount of payment to such producer or dairy farmer, or to a cooperative association for such producer's milk, with the price, deductions and charges involved and the nature of each.

§ 1016.32 Producer-handler reports. Each producer-handler shall make reports at such time and in such manner as the market administrator may request.

§ 1016.33 Exempt handler reports. Each handler exempt pursuant to §§ 1016.81 and 1016.82 shall report to the market administrator his disposition of fluid milk products on routes within the marketing area at such time and in such manner as the market administrator shall prescribe.

§ 1016.34 Records and facilities. Each handler shall maintain and make available to the market administrator, during the usual hours of business such accounts and records of all of his operations and such facilities as are necessary to verify reports or to ascertain the correct information with respect to:

(a) The receipts and utilization or disposition of all skim milk and butterfat received, including all milk products received and disposed of in the same form;

(b) The weights and tests for butterfat, skim milk and other content of all milk and milk products handled;

(c) Inventories of all dairy products on hand at the beginning and end of each month; and

(d) Payments to producers and cooperative associations.

§ 1016.35 Retention of records. All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided*, That if within such three year

period, the market administrator notifies a handler in writing that the retention of such books and records, or of specified books and records is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice, the handler shall retain such books and records until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 1016.40 Skim milk and butterfat to be classified. All skim milk and butterfat required to be reported pursuant to § 1016.30 shall be classified (separately as skim milk and butterfat), pursuant to §§ 1016.41 through 1016.45.

§ 1016.41 Classes of utilization. Subject to the conditions set forth in §§ 1016.42 and 1016.43, the classes of utilization shall be:

(a) Class I utilization shall be all skim milk and butterfat:

(1) Disposed of in the form of fluid milk products, except those classified pursuant to paragraph (c) (2) of this section; and

(2) Not accounted for as Class II and Class III utilization.

(b) Class II utilization shall be all skim milk and butterfat:

(1) Used to produce any product other than those specified in paragraphs (a) or (c) of this section; and

(2) In inventories of fluid milk products on hand at the end of the month.

(c) Class III utilization shall be all skim milk and butterfat:

(1) Used to produce butter, nonfat dry milk or cheese in any form except cottage cheese;

(2) In skim milk disposed of for livestock feed or dumped subject to prior notification to and verification (at his discretion) by the market administrator;

(3) In shrinkage of skim milk and butterfat allocated to milk received from producers, but not to exceed 2 percent of such receipts; and

(4) In shrinkage of other source milk.

§ 1016.42 Shrinkage. (a) When producer milk is utilized in conjunction with other source milk, the shrinkage shall be allocated pro rata between the receipts of skim milk and butterfat in producer milk and other source milk.

(b) Producer milk transferred by a handler to another handler without first having been received in the transferor handler's plants shall be included in the receipts at the plant of the transferee handler for the purpose of computing his shrinkage and shall be excluded at the plant of the transferor handler in computing his shrinkage.

§ 1016.43 Transfers. Skim milk and butterfat transferred or diverted as milk, skim milk or cream in bulk form from a pool plant to:

(a) The pool plant of another handler shall be classified at the utilization indicated by the operators of both plants in their reports submitted pursuant to

§ 1016.30, otherwise as Class I utilization, subject in either event to the following conditions:

(1) The receiving plant has utilization in such class of an equivalent amount of skim milk and butterfat, respectively, and

(2) Such skim milk and butterfat shall be classified so as to allocate to producer milk the greatest possible total Class I utilization in the two plants;

(b) A plant operated by a producer-handler or a handler exempt pursuant to § 1016.81, shall be Class I utilization;

(c) A nonpool plant (except as specified in paragraph (b) of this section) shall be Class I utilization unless the following conditions apply:

(1) Utilization in another class is claimed by the transferring handler in his report submitted pursuant to § 1016.30 for the month.

(2) Class I utilization in the nonpool milk plant does not exceed the receipts of skim milk and butterfat in milk received during the month from dairy farmers who the market administrator determines are the regular source of supply of Grade A milk for such plant. If Class I utilization exceeds such receipts, the skim milk and butterfat transferred shall be Class I to the extent of such excess, and

(3) The operator of the nonpool milk plant maintains books and records which are made available if requested by the market administrator and which are adequate for the verification of such utilization.

§ 1016.44 Responsibility of handlers. All skim milk and butterfat shall be classified as Class I utilization unless the handler who first received such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

§ 1016.45 Computation of skim milk and butterfat in each class. For each month the market administrator shall correct for mathematical and obvious errors the monthly report submitted by each handler and compute the total pounds of skim milk and butterfat respectively, in Class I, Class II and Class III utilization for such handler: *Provided*, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water normally associated with such solids in the form of whole milk.

§ 1016.46 Allocation of butterfat classified. The pounds of butterfat remaining after making the following computations shall be the pounds in each class allocated to milk received from producers:

(a) Subtract from the total pounds of butterfat in Class III utilization, the pounds of butterfat shrinkage allowed pursuant to § 1016.41 (c) (3);

(b) Subtract from the pounds of butterfat remaining in each class, in series beginning with the lowest-priced

utilization, the pounds of butterfat in other source milk received from a plant(s) other than those subject to another marketing agreement or order issued pursuant to the act;

(c) Subtract from the pounds of butterfat remaining in each class, in series beginning with the lowest-priced utilization, the pounds of butterfat in other source milk received from a plant subject to another marketing agreement or order issued pursuant to the act;

(d) Subtract from the pounds of butterfat remaining in Class II milk and Class I milk, in series beginning with Class II, the pounds of butterfat contained in inventory of fluid milk products on hand at the beginning of the month;

(e) Subtract from the remaining pounds of butterfat in each class the pounds of butterfat received as fluid milk products from pool plants of other handlers according to the classification established pursuant to §§ 1016.41 and 1016.43 (a);

(f) Add to the remaining pounds of butterfat in Class III utilization the pounds subtracted pursuant to paragraph (a) of this section; and

(g) If the remaining pounds of butterfat in all classes exceed the pounds of butterfat in milk received from producers, subtract such overage from the remaining pounds of butterfat in each class in series, beginning with the lowest-priced utilization.

§ 1016.47 *Allocation of skim milk classified.* Allocate the pounds of skim milk in each class to milk received from producers in the same manner as that prescribed for butterfat in § 1016.46.

§ 1016.48 *Computation of total producer milk in each class.* The amounts computed pursuant to §§ 1016.46 and 1016.47 will be combined into one total for each class and the weighted average butterfat content of producer milk in each class will be determined.

MINIMUM PRICES

§ 1016.50 *Basic formula price.* The basic formula price shall be the higher of the prices computed pursuant to paragraphs (a) and (b) of this section:

(a) The average of the basic or field prices per hundredweight reported to have been paid, or to be paid, for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the U. S. D. A.

Present Operator and Location

Borden Co., Mt. Pleasant, Mich.
Borden Co., New London, Wis.
Borden Co., Orfordville, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Richmond Center, Wis.
Carnation Co., Sparta, Mich.
Pet Milk Co., Cooperaville, Mich.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price per hundredweight computed from the following formula:

(1) Multiply by 4.24 the simple average, as computed by the market administrator, of the daily wholesale selling

prices (using the midpoint of any price range as one price) of Grade AA (93-score) bulk creamery butter per pound at Chicago, as reported by the U. S. D. A., during the month: *Provided*, That if no price is reported for Grade AA (93-score) butter, the highest of the prices reported for Grade A (92-score) butter for that day shall be used in lieu of the price for Grade AA (93-score) butter.

(2) Multiply by 8.2 the weighted average of carlot prices per pound for spray process nonfat dry milk, for human consumption, f. o. b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding delivery period through the 25th day of the current delivery period, by the U. S. D. A.; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph subtract 75.2 cents and adjust to the nearest full cent.

§ 1016.51 *Class I milk price.* Subject to the provisions of § 1016.54 the minimum price to be paid by each handler for milk received at his pool plant from producers or the pool plant of a cooperative association during the month and utilized as Class I milk during the 18 month period following the effective date of this part shall be:

(a) Except as provided in paragraph (b) of this section, the basic formula price for the preceding month plus \$0.54 for the months of March, April, May and June; \$0.74 for the months of January, February, July and December; and \$0.94 for all other months.

(b) For plants located in the Wisconsin counties of Florence, Forest, Marinette, Oneida and Vilas or in the State of Michigan, the price computed in paragraph (a) of this section shall be increased ten cents.

§ 1016.52 *Class II milk price.* Subject to the provisions of § 1016.54 the minimum price to be paid by each handler for milk received at his pool plant from producers or the pool plant of a cooperative association, during the month and utilized as Class II milk shall be the basic formula price.

§ 1016.53 *Class III milk price.* Subject to the provision of § 1016.54 the minimum price per hundredweight to be paid by each handler for milk received at his pool plant from producers or the pool plant of a cooperative association during the month and utilized as Class III milk shall be the price computed pursuant to § 1016.50 (b).

§ 1016.54 *Handler butterfat differential.* If the average butterfat test of Class I milk, Class II milk or Class III milk as computed pursuant to § 1016.48 is more or less than 3.5 percent, there shall be added to, or subtracted from, as the case may be, the price for such class of utilization, for each one-tenth of one percent that such average butterfat test is above or below 3.5 percent, a butterfat differential computed by multiplying the simple average, as computed by the market administrator, of the daily wholesale selling price per pound (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter at Chicago as reported by the

U. S. D. A. during the month specified below by the applicable factor listed, and rounding to the nearest one-tenth cent:

(a) For Class I milk, multiply such price for the preceding month by 0.125;

(b) For Class II and Class III milk, multiply such price for the current month by 0.115.

§ 1016.55 *Equivalent price provision.* Whenever the provisions of this part require the market administrator to use a specific price (or prices) for milk or any milk product for the purpose of determining minimum class prices or for any other purpose and the specified price is not reported or published, the market administrator shall use a price determined by the Secretary to be equivalent to or comparable with, the price specified.

HANDLER'S OBLIGATION AND UNIFORM PRICE

§ 1016.60 *Value of producer milk.* The value of producer milk received by each handler at pool plant(s) and by any cooperative association with respect to milk for which it is a handler pursuant to § 1016.9 (c) shall be computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1016.48, by the applicable respective class prices (adjusted pursuant to § 1016.54);

(b) Add the amounts computed by multiplying the quantity of overage assigned to each class pursuant to § 1016.46 (g) and the corresponding step of § 1016.47 by the applicable class price;

(c) Add the amount obtained in multiplying by the difference between the Class II price for the preceding month and the Class I price for the current month the lesser of:

(1) The hundredweight of milk subtracted from Class I pursuant to § 1016.46 (d) and the corresponding step of § 1016.47; or

(2) The hundredweight of producer milk classified as Class II, during the preceding month; and

(d) If during the month total receipts of producer milk were 110 percent or more of the total Class I milk at pool plants, add an amount equal to the difference between the values (at test and location) at the Class I price and Class II price with respect to (1) Other source milk subtracted from Class I pursuant to § 1016.46 (b) and the corresponding step of § 1016.47; and

(2) Milk in inventory subtracted from Class I pursuant to § 1016.46 (d) and the corresponding step of § 1016.47 which is in excess of the sum of:

(i) The quantity for which payment is computed pursuant to paragraph (c) of this section; and

(ii) The quantity subtracted from Class II pursuant to § 1016.46 (c) and the corresponding step of § 1016.47 in the month preceding.

§ 1016.61 *Computation of uniform price.* For each month, the market administrator shall compute the uniform price per hundredweight for producer milk of 3.5 percent butterfat content delivered to pool plants other than those specified in § 1016.63, as follows:

(a) Combine into one total the individual values of milk of all handlers computed pursuant to § 1016.60;

(b) Add, if the weighted average butterfat test of all producer milk represented in paragraph (a) of this section is less than 3.5 percent, or subtract, if the weighted average butterfat test of such milk is more than 3.5 percent, an amount computed by multiplying the total pounds of butterfat represented by the difference of such average butterfat test from 3.5 percent by the butterfat differential provided in § 1016.62 multiplied by 10;

(c) Subtract the aggregate of the values of the applicable producer location adjustments pursuant to § 1016.63;

(d) Add not less than one half of the unobligated balance in the producer-equalization fund;

(e) Divide the resulting amount by the hundredweight of milk received from producers; and

(f) Subtract not less than 4 cents nor more than 5 cents.

§ 1016.62 *Producer butterfat differential.* The applicable uniform prices to be paid pursuant to § 1016.70 to producers delivering milk to each handler shall be increased or decreased for each one-tenth of one percent which the butterfat content of his milk is above or below 3.5 percent, respectively, by a butterfat differential equal to the average of the butterfat differentials determined pursuant to paragraphs (a) and (b) of § 1016.54, weighted by the pounds of butterfat in producer milk used by such handler in each class and the result rounded to the nearest tenth of a cent.

§ 1016.63 *Producer location adjustments.* In making payments pursuant to § 1016.70 to producers or a cooperative association for milk received at a plant located in the Wisconsin counties of Florence, Forest, Marinette, Oneida or Vilas or in the State of Michigan, the uniform price computed pursuant to § 1016.61 shall be increased 10 cents.

§ 1016.64 *Notification.* On or before the 14th day after the end of each month, the market administrator shall mail to each handler, at his last known address a statement showing for such month:

(a) The amount and value of his producer milk in each class;

(b) The uniform price for the month pursuant to §§ 1016.61 and 1016.63 and the butterfat differential computed pursuant to § 1016.62; and

(c) The amount due such handler pursuant to § 1016.73 and the amounts to be paid by such handler pursuant to §§ 1016.72, 1016.74 and 1016.75.

PAYMENT FOR MILK

§ 1016.70 *Time and method of payment.* (a) (1) Except as provided in paragraphs (b) and (c) of this section, on or before the 18th day after the end of each month each handler who received milk from producers shall pay for milk received during such month to each producer for milk received from him the uniform price as provided in § 1016.61 adjusted by the butterfat differential pursuant to § 1016.62 and the location adjustment pursuant to § 1016.63.

(2) If by such date a handler has not received full payment pursuant to § 1016.73, he may reduce his total payments to all producers and cooperative associations uniformly by not more than the amount of reduction in payment from the market administrator; he shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator.

(b) (1) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any claim on the part of the association, each handler shall pay to the cooperative association on or before the 16th day of each month, in lieu of payments pursuant to paragraph (a) of this section an amount equal to the gross sum due for all milk received from certified members, less amount owing by each member-producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer and submit to the cooperative association on or before the 16th day of each month, written information which shows for each such member-producer:

(i) The total pounds of milk received from him during the preceding month,

(ii) The total pounds of butterfat contained in such milk,

(iii) The number of days on which milk was received, and

(iv) The amounts withheld by the handler in payment for supplies sold.

The foregoing payment and submission of information shall be made with respect to milk of each producer whom the cooperative association certifies is a member, which is received on and after the first day of the month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association.

(2) A copy of each such request, promise to reimburse, and a certified list of members shall be filed simultaneously with the market administrator by the association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, shall be made by written notice to the market administrator and shall be subject to his determination.

(c) Each handler shall make payment to a cooperative association for milk received from the pool plant of such cooperative association on or before the 10th day after the end of each month in which it was received, at not less than the applicable class prices.

§ 1016.71 *Producer-equalization fund.* The market administrator shall establish and maintain a separate fund, known as the "producer-equalization fund" into which he shall deposit all payments received pursuant to §§ 1016.72 and 1016.83 (a) (1) or (b) (1) (including

any adjustments thereto pursuant to § 1016.76) and out of which he shall make all payments pursuant to § 1016.73 (including any adjustments thereto pursuant to § 1016.76).

§ 1016.72 *Payments to the producer-equalization fund.* On or before the 16th day after the end of each month, each handler whose value of milk is required to be computed pursuant to § 1016.60 shall pay to the market administrator any amount by which such value for such month is greater than the minimum amount required to be paid by him pursuant to § 1016.70.

§ 1016.73 *Payments out of the producer-equalization fund.* On or before the 17th day after the end of each month, the market administrator shall pay to each handler any amount by which the value of milk for such handler for the month pursuant to § 1016.60 is less than the total minimum amount required to be paid by him pursuant to § 1016.70, less any unpaid obligations of such handler to the market administrator pursuant to § 1016.72: *Provided*, That if the balance in the producer-equalization fund is insufficient to make all payments to all such handlers pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

§ 1016.74 *Expense of administration.* As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 16th day after the end of each month 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as the Secretary may prescribe with respect to:

(a) All receipts within the month of milk from producers, including milk of such handler's own production;

(b) Any other source milk allocated to Class I pursuant to § 1016.46 (b) and the corresponding step of § 1016.47; and

(c) The applicable amount specified in § 1016.83 (a) (2) or (b) (2).

§ 1016.75 *Marketing services.* (a) Except as set forth in paragraph (b) of this section, each handler, in making payments pursuant to § 1016.70 for milk received from each producer (excluding milk of such handler's own production) at a plant not operated by a cooperative association of which such producer is a member, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as the Secretary may prescribe, and on or before the 16th day after the end of each month shall pay such deduction to the market administrator. Such monies shall be used by the market administrator to verify weights, samples and tests of milk received from producers and to provide producers with market information, such services to be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers whose milk is received at a pool plant not operated by a cooperative association of which such producers are members, and for whom a cooperative association

is actually performing the services described in paragraph (a) of this section, as determined by the Secretary, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from payments required pursuant to § 1016.70 as may be authorized by such producers, and pay such deductions on or before the 16th day after the end of the month to the cooperative association rendering such services of which such producers are members.

§ 1016.76 *Errors in payment.* Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in monies due:

(a) To the market administrator from such handler,

(b) To such handler from the market administrator, or

(c) To any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any such amount due and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred, following the 5th day after such notice.

§ 1016.77 *Overdue accounts.* Any unpaid obligation of a handler or of the market administrator pursuant to §§ 1016.72 through 1016.76 shall be increased one-half of one percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

§ 1016.78 *Termination of obligations.* The provisions of this section shall apply to any obligations under this part for the payment of money irrespective of when such obligation arose.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the month during which the market administrator receives the handler's report of utilization of the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producer(s) or associations or, if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market

administrator may within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c (15) (A) of the act, a petition claiming such money.

APPLICATION OF PROVISIONS

§ 1016.80 *Producer-handler exemption.* A producer-handler shall be exempt from all provisions of this part except §§ 1016.32, 1016.34 and 1016.35.

§ 1016.81 *Exempt handler.* A handler who operates a fluid milk plant located outside the marketing area from which an average of less than 600 pounds of fluid milk products per day are disposed of during the month in the marketing area on route(s), shall be exempt from all provisions of this part except §§ 1016.33 through 1016.35.

§ 1016.82 *Handlers subject to other Federal orders.* The provisions of this part shall not apply to a handler with respect to the operation of a pool plant during any month in which the milk at such plant would be subject to the classification, pricing and payment provisions of another marketing agreement or order issued pursuant to the act and the disposition of fluid milk products in the other Federal marketing area exceed that in the Northeastern Wisconsin marketing area: *Provided*, That the operator of a pool plant which is exempted from the provisions of this part pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

§ 1016.83 *Handler operating a non-pool distributing plant.* Each handler, other than a producer-handler or one exempt pursuant to §§ 1016.81 or 1016.82,

who during the month operates a Grade A milk plant from which fluid milk products are distributed on a route in the marketing area, shall, in lieu of the payments required pursuant to §§ 1016.70 through 1016.74, pay to the market administrator as follows:

(a) If such handler so elects at the time of reporting pursuant to § 1016.30, his obligations shall be as follows:

(1) On or before the 16th day after the end of the month, for the producer-equalization fund, an amount equal to the difference between the value of the Class I milk disposed of during the month on routes in the marketing area at the applicable Class I price for the month and the value of such milk at the Class III price; and

(2) On or before the 16th day after the end of the month, as his pro rata share of the expense of administration, the rate specified in § 1016.74 with respect to Class I milk disposed of on routes in the marketing area.

(b) Unless such handler elects to have his obligations computed pursuant to paragraph (a) of this section, his obligations shall be as follows:

(1) On or before the 25th day after the end of the month, for the producer-equalization fund, the lesser of the amount computed pursuant to paragraph (a) (1) of this section, or any plus amount resulting from the following computation:

(i) Compute an amount equal to the value of milk which would be computed pursuant to § 1016.60 for Grade A milk received from dairy farmers at such plant for such month if such plant had been a pool plant;

(ii) Deduct the gross payments made by the handler to dairy farmers, for Grade A milk received at such plant for such month. Gross payments to be included in this computation shall be limited to cash payments made to the dairy farmer or his assignee on or before the date of the report required pursuant to § 1016.31, plus the value of any supplies or services furnished by the handler on prior written authorization or as evidenced by a delivery ticket signed by the dairy farmer; and

(2) On or before the 16th day after the end of the month, as his pro rata share of the expense of administration, an amount equal to that which would have been computed pursuant to § 1016.74 had such plant been a pool plant.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 1016.90 *Effective time.* The provisions of this part, or any amendment to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 1016.91 *Suspension or termination.* The Secretary shall, whenever he finds that this part, or any provision of this part, obstructs or does not tend to effectuate the declared policy of the act, terminate or suspend the operation of this part or any such provision of this part.

§ 1016.92 *Continuing obligation.* If upon the suspension or termination of any or all provisions of this part, there

are any obligations thereunder the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 1016.93 *Liquidation.* (a) Under the suspension or termination of the provisions of this part, except this section, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated all assets, books and records of the market administrator shall be transferred promptly to such liquidating agent.

(b) If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers, in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1016.100 *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 1016.101 *Separability of provisions.* If any provision of this part, or the application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Issued at Washington, D. C., this 21st day of October 1958, to be effective as follows:

Sections 1016.0 to 1016.22 (h), §§ 1016.30 to 1016.48, §§ 1016.80 to 1016.82 and §§ 1016.90 to 1016.101, shall be effective November 1, 1958, and all of the remaining provisions shall be effective December 1, 1958.

[SEAL] TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 58-8833; Filed, Oct. 23, 1958;
8:56 a. m.]

TITLE 14—CIVIL AVIATION

Chapter II—Civil Aeronautics Administration, Department of Commerce

[Amdt. 3]

PART 407—PROCEDURE FOR USE OF DOMESTIC NON-FEDERAL NAVIGATION FACILITIES FOR CAA APPROVED OPERATIONS

COSTS OF INSPECTIONS

This amendment modifies prior policy by relieving the owner of the facility from the payment of the costs of the periodic flight checks and ground inspections conducted by the Civil Aeronautics Administration to ascertain that

the requirements satisfied at the time of the commissioning of the facility are continuously met.

Part 407 is amended as follows:

1. Section 407.2 (b) is amended to read as follows:

§ 407.2 *Policy.* * * *

(b) The owner will bear all costs incident upon his meeting the requirements set forth in paragraph (a) of this section and those for flight and ground inspections conducted by CAA prior to the commissioning of the facility.

2. Section 407.11 (b) is amended to read as follows:

§ 407.11 *Policy.* * * *

(b) The owner will bear all costs incident upon his meeting the requirements set forth in paragraph (a) of this section and those for flight and ground inspections conducted by CAA prior to the commissioning of the facility.

3. Section 407.21 (b) is amended to read as follows:

§ 407.21 *Policy.* * * *

(b) The owner will bear all costs incident upon his meeting the requirements set forth in paragraph (a) of this section and those for flight and ground inspections conducted by CAA prior to the commissioning of the facility.

(Sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interprets or applies sec. 301, 302, 601, 52 Stat. 985, 1007, as amended; 49 U. S. C. 451, 452, 551)

This amendment shall become effective November 10, 1958.

[SEAL] WILLIAM B. DAVIS,
Acting Administrator
of Civil Aeronautics.

OCTOBER 20, 1958.

[F. R. Doc. 58-8791; Filed, Oct. 23, 1958;
8:46 a. m.]

[Amdt. 18]

PART 600—DESIGNATION OF CIVIL AIRWAYS ALTERATIONS

The civil airway alterations appearing hereinafter have been coordinated with the civil operators involved, the Army, the Navy, and the Air Force, through the Air Coordinating Committee, Airspace Division, and are adopted to become effective when indicated in order to promote safety. Compliance with the notice, procedures and effective date provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to public interest and therefore is not required.

Part 600 is amended as follows:

1. Section 600.106 *Amber civil airway No. 6 (Jacksonville, Fla., to United States-Canadian Border)* is amended by changing the entire last portion to read: "From the Akron, Ohio, RR via the intersection of the north course of the Akron RR and the east course of the Cleveland, Ohio, RR; Perry, Ohio, RBN to the Clear Creek, Ont., Canada, RBN."

2. Section 600.201 *Red civil airway No. 1 (Big Spring, Tex., to San Antonio, Tex.)* is revoked.

3. Section 600.217 is amended by changing the caption to read: "*Red civil airway No. 17 (Rantoul, Ill., to Baltimore, Md.)*" and by deleting the first portion which reads: "From the intersection of the southwest course of the Belleville, Ill., Scott AFB radio range with a point on the southwest course of the Scott AFB radio range 48 miles southwest of the Belleville, Ill., Scott AFB radio range station via the Belleville, Ill., Scott AFB radio range station to the intersection of the northeast course of the Scott AFB radio range and the west course of the Effingham, Ill., radio range."

4. Section 600.222 is amended by changing the caption to read: "*Red civil airway No. 22 (Mount Clemens, Mich., to Buffalo, N. Y.)*" and by deleting the entire last portion which reads: "From the Syracuse, N. Y., radio range station via the Utica, N. Y., radio range station to the intersection of the southeast course of the Utica, N. Y., radio range and the west course of the Albany, N. Y., radio range."

5. Section 600.234 is amended by changing the caption to read: "*Red civil airway No. 34 (Pulaski, Va., to Weeksville, N. C.)*" and by changing the entire first portion to read: "From the Pulaski, Va., RR to the Greensboro, N. C., RR."

6. Section 600.237 *Red civil airway No. 37 (Tyler, Tex., to Gordonsville, Va.)* is amended by changing the entire last portion to read: "From the Roanoke, Va., RR via the Lynchburg, Va., RR to the Gordonsville, Va., RR."

7. Section 600.238 *Red civil airway No. 38 (Big Spring, Tex., to San Antonio, Tex.)* is revoked.

8. Section 600.268 is amended by changing the caption to read: "*Red civil airway No. 68 (Palo Pinto, Tex., to Shreveport, La.)*" and by deleting the first portion which reads: "From the Midland, Tex., radio range to the San Angelo, Tex., radio range."

9. Section 600.606 is amended to read:

§ 600.606 *Blue civil airway No. 6 (Springfield, Ill., to Muskegon, Mich.).* From the Springfield, Ill., RR to the Peoria, Ill., RR. From the INT of the west course of the Goshen, Ind., RR and the south course of the South Bend, Ind., RR via the South Bend, Ind., RR to the INT of the north course of the South Bend, Ind., RR and the northeast course of the Chicago, Ill., RR. From the INT of the northeast course of the Chicago, Ill., RR and the southwest course of the Grand Rapids, Mich., RR to the Muskegon, Mich., RR.

10. Section 600.639 *Blue civil airway No. 39 (Augusta, Ga., to Elmira, N. Y.)* is amended by deleting the portion which reads: "From the Tri-City, Tenn., radio range station via the Paynesville, W. Va., nondirectional radio beacon; the intersection of a line bearing 14° True from the Paynesville, W. Va., nondirectional radio beacon and the south course of the Charleston, W. Va., radio range to the Charleston, W. Va., radio range station."

11. Section 600.681 *Blue civil airway No. 81 (Charleston, W. Va., to Akron, Ohio)* is revoked.

12. Section 600.6002 *VOR civil airway No. 2 (Seattle, Wash., to Boston, Mass.)*

is amended by changing the portion which reads: "Lansing, Mich., omnirange station, including a south alternate via the Grand Rapids, Mich., ILS outer marker; to the Salem, Mich., omnirange station;" to read: "Lansing, Mich., VOR, including a south alternate via the Grand Rapids, Mich., ILS OM; to the Salem, Mich., VOR, including a north alternate via the Lansing VOR 085° and the Salem VOR 307° radials."

13. Section 600.6005 *VOR civil airway No. 5 (Jacksonville, Fla., to London, Ont.)* is amended by changing all before "Nashville, Tenn., omnirange station;" to read: "From the Jacksonville, Fla., VOR via the INT of the Jacksonville VOR 319° and the Alma VOR 148° radials; Alma, Ga., VOR, including a west alternate; Macon, Ga., VOR, including an east alternate from the Jacksonville VOR to the Macon VOR via the INT of the Jacksonville VOR 334° and the Macon VOR 125° radials; McDonough, Ga., VORTAC; Chattanooga, Tenn., VOR, including a west alternate from the Alma VOR to the Chattanooga VOR via the INT of the Alma VOR 305° and the Vienna VOR 135° radials, the Vienna, Ga., VOR, the Atlanta, Ga., VOR and the INT of the Atlanta VOR 355° and the Chattanooga VOR 152° radials; Nashville, Tenn., VOR;"

14. Section 600.6007 *VOR civil airway No. 7 (Miami, Fla., to Green Bay, Wis.)* is amended by changing the portion which reads: "Evansville, Ind., omnirange station; Terre Haute, Ind., omnirange station, including a west alternate; Westpoint, Ind., omnirange station, including a west alternate via the Terre Haute omnirange 348° and the Westpoint omnirange direct radial to the Vandalia, Ill., omnirange station; Lafayette, Ind., omnirange station;" to read: "Evansville, Ind., VOR; Lewis, Ind., VOR; Terre Haute, Ind., VOR, including a west alternate from the Evansville VOR to the Terre Haute VOR via the INT of the Evansville VOR 001° and the Terre Haute VOR 211° radials; Westpoint, Ind., VOR, including a west alternate via the INT of the Terre Haute VOR 348° radial with the Westpoint VOR direct radial to the Vandalia, Ill., VOR; Lafayette, Ind., VOR;"

15. Section 600.6009 is amended to read:

§ 600.6009 *VOR civil airway No. 9 (New Orleans, La., to Green Bay, Wis.)*. From the New Orleans, La., VOR via the McComb, Miss., VOR, including a west alternate via the INT of the New Orleans VOR 326° and the McComb VOR 199° radials and also an east alternate from the New Orleans VOR to the McComb VOR via the Picayune, Miss., VOR; Jackson, Miss., VOR, including an east alternate via the INT of the McComb VOR 021° and the Jackson VOR 140° radials and also a west alternate via the INT of the McComb VOR 348° and the Jackson VOR 224° radials; Greenwood, Miss., VOR, including an east alternate via the INT of the Jackson VOR 032° and the Greenwood VOR 159° radials and also a west alternate via the INT of the Jackson VOR 328° and the Greenwood VOR 193° radials; Memphis, Tenn., VOR, including an east al-

ternate via the INT of the Greenwood VOR 027° and the Memphis VOR 168° radials and also a west alternate; INT Memphis VOR 322° and the Malden VOR 195° radials; Malden, Mo., VOR, including an east alternate from the Memphis VOR to the Malden VOR via the INT of the Memphis VOR 345° and the Malden VOR 184° radials; Farmington, Mo., VOR, including a west alternate; St. Louis, Mo., VOR, including a west alternate; Springfield, Ill., VOR, including a west alternate; Pontiac, Ill., VOR; Joliet, Ill., VOR; Naperville, Ill., VOR; point of INT of the Janesville, Wis., VOR 098° and the Milwaukee VOR 192° radials; Milwaukee, Wis., VOR, including a west alternate via the INT of the Naperville VOR 317° and the Milwaukee VOR 207° radials; Oshkosh, Wis., VOR; to the Green Bay, Wis., VOR. The portion of this airway which lies within the geographic limits of, and between the designated altitudes of, the Camp Villere Restricted Area (R-440) is excluded during its time of designation.

16. Section 600.6010 *VOR civil airway No. 10 (Pueblo, Colo., to New York, N. Y.)* is amended by changing all before "Dodge City, Kans., omnirange station;" to read: "From the Pueblo, Colo., VOR via the Lamar, Colo., VOR; Garden City, Kans., VORTAC, including a north alternate via the INT of the Lamar VOR 076° and the Garden City VOR 296° radials; Dodge City, Kans., VOR;"

17. Section 600.6011 *VOR civil airway No. 11 (Memphis, Tenn., to Detroit, Mich.)* is amended by changing all before "intersection of the Paducah omnirange 039° True and the Evansville omnirange 227° True radials;" to read: "From the Memphis, Tenn., VOR via the point of INT of the Memphis VOR 345° and the Malden, Mo., VOR 184° radials; point of INT of the Malden, Mo., VOR 184° and the Dyersburg VOR 235° radials; Dyersburg, Tenn., VOR; Paducah, Ky., VOR, including an east alternate from the Memphis VOR to the Paducah VOR via the point of INT of the Memphis VOR 066° and the Holly Springs, Miss., VOR 028° radials; point of INT of the Holly Springs, Miss., VOR 028° and the Paducah VOR 179° radials; INT of the Paducah VOR 039° and the Evansville VOR 227° radials;"

18. Section 600.6013 *VOR civil airway No. 13 (Houston, Tex., to Duluth, Minn.)* is amended by changing the portion which reads: "Kansas City, Mo., VOR; Lamoni, Iowa, VOR, including an east alternate via the INT of the Kansas City VOR 035° and the Lamoni VOR 175° radials;" to read: "Kansas City, Mo., VOR including an east alternate via the INT of the Butler VOR 013° and the Kansas City VOR 157° radials; Lamoni, Iowa, VOR, including an east alternate via the INT of the Kansas City VOR 035° and the Lamoni VOR 174° radials;"

19. Section 600.6015 is amended to read:

§ 600.6015 *VOR civil airway No. 15 (Galveston, Tex., to Minot, N. Dak.)*. From the Galveston, Tex., VOR via the Houston, Tex., VOR; INT of the Houston VOR 323° and the College Station VOR

124° radials; College Station, Tex., VOR; Waco, Tex., VOR, including an east alternate and also a west alternate via the INT of the College Station VOR 307° and the Waco VOR 173° radials; Dallas, Tex., VOR, including an east alternate via the INT of the Waco VOR 036° and the Dallas VOR 178° radials; INT of the Dallas VOR 357° and the Ardmore VOR 159° radials; Ardmore, Okla., VOR, including a west alternate from the Dallas, Tex., VOR to the Ardmore VOR via the INT of the Dallas VOR 324° and the Ardmore VOR 176° radials; Okmulgee, Okla., VOR, including an east alternate and also a west alternate via the point of INT of the Oklahoma City, Okla., VOR 107° and the Tulsa, Okla., VOR 228° radials; point of INT of the Tulsa, Okla., VOR 088° and the Neosho VOR 223° radials; to the Neosho, Mo., VOR. From the Kansas City, Mo., VOR via the St. Joseph, Mo., VOR, including an east alternate via the INT of the Kansas City VOR 020° and the St. Joseph VOR 132° radials; INT of the St. Joseph VOR 343° and the Neola VOR 157° radials; Neola, Iowa, VOR, including an east alternate via the INT of the St. Joseph VOR 358° and the Neola VOR 142° radials; INT of the Neola VOR 322° and the Sioux City VOR 160° radials; Sioux City, Iowa, VOR; INT of the Sioux City VOR 340° and the Sioux Falls VOR 169° radials; Sioux Falls, S. Dak., VOR, including an east alternate; Huron, S. Dak., VOR, including a west alternate; Aberdeen, S. Dak., VOR, including a west alternate; Bismarck, N. Dak., VOR, including a west alternate; to the Minot, N. Dak., VOR.

20. Section 600.6016 *VOR civil airway No. 16 (Los Angeles, Calif., to Boston, Mass.)* is amended by changing the portion which reads: "Pine Bluff, Ark., omnirange station, including a south alternate via the intersection of the Texarkana omnirange 090° and the Pine Bluff omnirange 233° radials; Memphis, Tenn., omnirange station, including a south alternate via the intersection of the Pine Bluff omnirange 079° True and the Memphis omnirange 224° True radials;" to read: "Pine Bluff, Ark., VOR, including a south alternate via the INT of the Texarkana VOR 090° and the Pine Bluff VOR 233° radials; INT of the Pine Bluff VOR 067° and the Memphis VOR 241° radials; Memphis, Tenn., VOR, including a north alternate via the INT of the Pine Bluff VOR 052° and the Memphis VOR 276° radials and also a south alternate via the INT of the Pine Bluff VOR 082° and the Memphis VOR 225° radials;"

21. Section 600.6017 *VOR civil airway No. 17 (Laredo, Tex., to Goodland, Kans.)* is amended by changing the portion which reads: "Waco, Tex., omnirange station, including an east alternate via the intersection of the Austin omnirange 044° True and the Waco omnirange 181° True radials;" to read: "Waco, Tex., VOR, including an east alternate via the INT of the Austin VOR 031° and the Waco VOR 173° radials;"

22. Section 600.6018 is amended to read:

§ 600.6018 *VOR civil airway No. 18 (Dallas, Tex., to Charleston, S. C.)*. From the Dallas, Tex., VOR via the Quit-

man, Tex., VOR; Shreveport, La., VOR; Monroe, La., VOR, including a north alternate and also a south alternate via the INT of the Shreveport VOR 117° and the Monroe VOR 267° radials; Jackson, Miss., VOR, including a north alternate via the INT of the Monroe VOR 072° and the Jackson VOR 291° radials and also a south alternate via the INT of the Monroe VOR 110° and the Jackson VOR 248° radials; Meridian, Miss., VOR, including a north alternate via the INT of the Jackson VOR 070° and the Meridian VOR 299° radials and also a south alternate via the INT of the Jackson VOR 140° and the Meridian VOR 259° radials; INT of the Meridian VOR 057° and the Birmingham ILS localizer southwest course; INT of the Birmingham ILS localizer southwest course and the Anniston VOR 265° radial; Anniston, Ala., VOR, including a north alternate from the Meridian VOR to the Anniston VOR via the point of INT of the Meridian VOR 040° and the Tuscaloosa VOR 239° radials, the Tuscaloosa, Ala., VOR and the Birmingham, Ala., VOR; INT of the Anniston VOR 084° radial and the Atlanta Airport ILS localizer west course; Atlanta, Ga., Airport ILS localizer; INT of the Atlanta Airport ILS localizer east course and the Augusta VOR 278° radial; Augusta, Ga., VOR, including a south alternate from the Anniston VOR to the Augusta VOR via the INT of the Anniston VOR 104° and the Atlanta VOR 262° radials, the Atlanta, Ga., VOR, the McDonough, Ga., VORTAC, and the INT of the McDonough VORTAC 088° and the Augusta VOR 263° radials; INT of the Augusta VOR 157° and the Allendale VOR 261° radials; Allendale, S. C., VOR; to the Charleston, S. C., VOR. The portion of this airway which lies within the geographic limits of, and between the designated altitudes of, the Fort McClellan Restricted Area (R-130) is excluded during its time of designation.

23. Section 600.6031 is amended to read:

§ 600.6031 VOR civil airway No. 31 (Baltimore, Md., to Rochester, N. Y.). From the Baltimore, Md., VOR via the Harrisburg, Pa., VOR; Selinsgrove, Pa., VOR; Williamsport, Pa., VOR; Elmira, N. Y., VOR; point of INT of the Elmira VOR 355° radial with the Ithaca, N. Y., VOR direct radial to the Rochester VOR; to the Rochester, N. Y., VOR.

24. Section 600.6034 VOR civil airway No. 34 (Rochester, N. Y., to Wilton, Conn.) is amended by changing all before "Wilton, Conn., omnirange station;" to read: "From the Rochester, N. Y., VOR via the Ithaca, N. Y., VOR; Binghamton, N. Y., VOR; Wilton, Conn., VOR."

25. Section 600.6035 VOR civil airway No. 35 (Key West, Fla., to Syracuse, N. Y.) is amended by changing the portion which reads: "to the Syracuse, N. Y., omnirange station, including an east alternate via the intersection of the Elmira omnirange 047° and the Syracuse omnirange 177° radials," to read: "to the Syracuse, N. Y., VOR."

26. Section 600.6038 is amended to read:

§ 600.6038 VOR civil airway No. 38 (Iowa City, Iowa, to Elkins, W. Va.). From the Iowa City, Iowa, VOR via the point of INT of the Iowa City VOR 093° and the Cordova, Ill., VOR 138° radials; Joliet, Ill., VOR; Peotone, Ill., VOR; Fort Wayne, Ind., VOR; Findlay, Ohio, VOR; Appleton, Ohio, VOR; Zanesville, Ohio, VOR; Parkersburg, W. Va., VOR; to the Elkins, W. Va., VOR.

27. Section 600.6039 is amended to read:

§ 600.6039 VOR civil airway No. 39 (South Boston, Va., to Kennebunk, Maine). From the South Boston, Va., VOR via the Gordonsville, Va., VOR; Casanova, Va., VOR; Herndon, Va., VOR; Westminster, Md., VOR; point of INT of the Allentown VOR 228° radial with the Harrisburg, Pa., VOR direct radial to the West Chester, Pa., VOR; Allentown, Pa., VOR; Stroudsburg, Pa., VOR; Poughkeepsie, N. Y., VOR; Westfield, Mass., VOR; Gardner, Mass., VOR; Concord, N. H., VOR; to the Kennebunk, Maine, VOR.

28. Section 600.6050 is amended to read:

§ 600.6050 VOR civil airway No. 50 (St. Joseph, Mo., to Dayton, Ohio). From the St. Joseph, Mo., VOR via the Kirksville, Mo., VOR; Quincy, Ill., VOR, including a south alternate via the INT of the Kirksville VOR 121° and the Quincy VOR 258° radials; Springfield, Ill., VOR; Terre Haute, Ind., VOR; to the point of INT of the Terre Haute VOR 082° radial and the Indianapolis, Ind., Wier Cook Airport ILS localizer 225° course. From the Indianapolis, Ind., VOR via the INT of the Indianapolis VOR 084° and the Dayton VOR 261° radials; Dayton, Ohio, VOR, including a north alternate from the Indianapolis VOR to the Dayton VOR via the point of INT of the Indianapolis, Ind., VOR 069° and the Fort Wayne, Ind., VOR 187 radials.

29. Section 600.6051 is amended to read:

§ 600.6051 VOR civil airway No. 51 (Key West, Fla., to Chicago, Ill.). From the Key West, Fla., VOR via the point of INT of the Miami VOR 221° and the Biscayne VOR 262° radials; Biscayne, Fla., VOR; Miami, Fla., VOR; INT of the Miami VOR 344° and the Vero Beach VOR 191° radials; Vero Beach, Fla., VOR; Daytona Beach, Fla., VOR; INT of the Daytona Beach VOR 344° and the Jacksonville VOR 159° radials; Jacksonville, Fla., VOR; INT of the Jacksonville VOR 319° and the Alma VOR 148° radials; Alma, Ga., VOR, including a west alternate; Macon, Ga., VOR, including an east alternate from the Jacksonville VOR to the Macon VOR via the INT of the Jacksonville VOR 334° and the Macon VOR 125° radials; McDonough, Ga., VOR; Chattanooga, Tenn., VOR, including a west alternate from the Alma VOR to the Chattanooga VOR via the INT of the Alma VOR 305° and the Vienna VOR 135° radials, the Vienna, Ga., VOR, the Atlanta, Ga., VOR and the INT of the Atlanta VOR 355° and the Chattanooga VOR 152°

radials; Crossville, Tenn., VOR, including an east alternate via the INT of the Chattanooga VOR 063° and the Crossville VOR 171° radials; Louisville, Ky., VOR; Nabb, Ind., VOR; Shelbyville, Ind., VOR; INT of the Shelbyville VOR 313° and the Lafayette VOR 136° radials; Lafayette, Ind., VOR; Chicago Heights, Ill., VOR; to the point of INT of the Chicago Heights VOR 342° and the Naperville, Ill., VOR 090° radials. The portion of this airway which lies within the geographic limits of, and between the established altitudes of, the Key West Warning Area (W-173) is excluded during the time of use of this warning area.

30. Section 600.6052 is amended to read:

§ 600.6052 VOR civil airway No. 52 (Des Moines, Iowa, to Evansville, Ind.). From the Des Moines, Iowa, VOR via the Ottumwa, Iowa, VOR, including a south alternate; Quincy, Ill., VOR, including a north alternate; St. Louis, Mo., VOR, including a north alternate; Troy, Ill., VOR; INT of the Troy VOR 088° and the Evansville VOR 309° radials; to the Evansville, Ind., VOR.

31. Section 600.6054 VOR civil airway No. 54 (Quitman, Tex., to Charlotte, N. C.) is amended by changing the portion which reads: "Muscle Shoals, Ala., omnirange station, including a south alternate;" to read: "Muscle Shoals, Ala., VOR, including a north alternate via the INT of the Memphis VOR 081° and the Muscle Shoals VOR 297° radials and also a south alternate from the Memphis VOR to the Muscle Shoals VOR via the point of INT of the Memphis VOR 168° and the Holly Springs, Miss., VOR 294° radials, the Holly Springs VOR, the point of INT of the Holly Springs VOR 099° and the Muscle Shoals VOR 255° radials;"

32. Section 600.6076 is amended to read:

§ 600.6076 VOR civil airway No. 76 (Lubbock, Tex., to Galveston, Tex.). From the Lubbock, Tex., VOR via the Big Spring, Tex., VOR; San Angelo, Tex., VOR, including a north alternate via the point of INT of the Big Spring VOR 124° and the San Angelo VOR 024° radials; Llano, Tex., VOR; Austin, Tex., VOR, including a north alternate from the San Angelo VOR to the Austin VOR via the Lometa, Tex., VOR; Houston, Tex., VOR; to the Galveston, Tex., VOR.

33. Section 600.6077 VOR civil airway No. 77 (Cotulla, Tex., to Des Moines, Iowa) is amended by changing the portion which reads: "San Angelo, Tex., omnirange station; Abilene, Tex., omnirange station, including an east alternate via the intersection of the San Angelo omnirange 072° and the Abilene omnirange 181° radials; Wichita Falls, Tex., omnirange station, including an east alternate;" to read: "San Angelo, Tex., VOR; Abilene, Tex., VOR; Wichita Falls, Tex., VOR, including an east alternate;"

34. Section 600.6084 VOR civil airway No. 84 (Shabbona, Ill., to Syracuse, N. Y.) is amended by changing all after "Buffalo, N. Y., omnirange station;" to

read: "Buffalo, N. Y., VOR; Geneseo, N. Y., VOR; point of INT of the Elmira, N. Y., VOR 355° radial with the Ithaca, N. Y., VOR direct radial to the Rochester, N. Y., VOR; to the Syracuse, N. Y., VOR."

35. Section 600.6094 is amended to read:

§ 600.6094 VOR civil airway No. 94 (Caas Grande, Ariz., to Monroe, La.) From the Casa Grande, Ariz., VOR via the San Simon, Ariz., VOR; Deming, N. Mex., VOR; INT of the Deming VOR 112° and the Newman VOR 272° radials; Newman, Tex., VOR; INT of the Newman VOR 091° and the Salt Flat VOR 312° radials; Salt Flat, Tex., VOR; Carlsbad, N. Mex., VOR; to the Hobbs, N. Mex., VOR. From the Abilene, Tex., VOR via the INT of the Abilene VOR 096° and the Britton VOR 264° radials; Britton, Tex., VOR; Gregg County, Tex., VOR; INT of the Gregg County VOR 092° and the Monroe VOR 267° radials; to the Monroe, La., VOR. The portions of this airway which lie within the geographic limits of and between the designated altitudes of, the White Sands Restricted Area (R-209) and the McGregor Restricted Area (R-211) are excluded during the times of designation of these restricted areas.

36. Section 600.6134 is amended to read:

§ 600.6134 VOR civil airway No. 134 (Evergreen, Ala., to Athens, Ga.). From the Evergreen, Ala., VOR via the INT of the Evergreen VOR 075° and the Columbus VOR 219° radials; Columbus, Ga., VOR; McDonough, Ga., VORTAC; to the Athens, Ga., VOR.

37. Section 600.6135 VOR civil airway No. 135 (Yuma, Ariz., to Tonopah, Nev.) is amended by adding a last sentence to read: "The portion of this airway which lies within the geographic limits of, and between the designated altitudes of, the Tonopah Restricted Area (R-271) is excluded during its time of designation."

38. Section 600.6140 VOR civil airway No. 140 (Amarillo, Tex., to New York, N. Y.) is amended by changing the portion which reads: "Nashville, Tenn., omnirange station, including a south alternate from the Dyersburg omnirange station to the Nashville omnirange station via the intersection of the Dyersburg omnirange 104° True and the Graham omnirange 269° True radials, the Graham, Tenn., omnirange station, and the intersection of the Graham omnirange 069° and the Nashville omnirange 254° radials;" to read: "Nashville, Tenn., VOR, including a south alternate from the Dyersburg VOR to the Nashville VOR via the INT of the Dyersburg VOR 117° and the Graham VOR 269° radials, the Graham, Tenn., VOR, and the INT of the Graham VOR 069° and the Nashville VOR 254° radials;" and by changing the portion which reads: "Montebello, Va., omnirange station; point of intersection of the Gordonsville, Va., omnirange direct radial to the Herndon, Va., omnirange station with the Brooke, Va., omnirange 306° True radials; to the Herndon, Va., omnirange station. From the Baltimore,

Md., omnirange station via the point of intersection of the Baltimore LF radio range north course, the West Chester, Pa., omnirange 231° and the Westminster, Md., omnirange 107° radials;" to read: "Montebello, Va., VOR; Casanova, Va., VOR; the point of INT of the Front Royal, Va., VOR 112° and the Washington TVOR 245° radials; to the Washington, D. C., TVOR. From the point of INT of the Baltimore, Md., RR north course, the West Chester, Pa., VOR 231° and the Westminster, Md., VOR 107° radials;"

39. Section 600.6155 is amended to read:

§ 600.6155 VOR civil airway No. 155 (Raleigh, N. C., to Washington, D. C.). From the Raleigh, N. C., VOR via the Lawrenceville, Va., VOR; INT of the Lawrenceville VOR 035° and the Flat Rock VOR 171° radials; Flat Rock, Va., VOR; Gordonsville, Va., VOR; to the Casanova, Va., VOR. The portion of this airway which lies within the geographic limits of, and between the designated altitudes of, the Camp Pickett Restricted Area (R-44) is excluded during its time of designation.

40. Section 600.6161 VOR civil airway No. 161 (Fort Worth, Tex., to Alexandria, Minn.) is amended by changing the portion which reads: "intersection of the Blue Springs omnirange 016° True and the Lamoni omnirange 175° True radials;" to read: "INT of the Blue Springs VOR 016° and the Lamoni VOR 174° radials;"

41. Section 600.6163 VOR civil airway No. 163 (Brownsville, Tex., to Oklahoma City, Okla.) is amended by changing the portion which reads: "Lometa, Tex., omnirange station, including a west alternate via the intersection of the San Antonio omnirange 334° True and the Lometa omnirange 192° True radials;" to read: "Lometa, Tex., VOR, including a west alternate from the San Antonio VOR to the Lometa VOR via the INT of the San Antonio VOR 334° and the Llano VOR 180° radials and the Llano, Tex., VOR;"

42. Section 600.6176 is added to read:

§ 600.6176 VOR civil airway No. 176 (Memphis, Tenn., to Birmingham, Ala.). From the Memphis, Tenn., VOR via the Holly Springs, Miss., VOR, including a south alternate via the INT of the Memphis VOR 168° and the Holly Springs VOR 294° radials; Birmingham, Ala., VOR, including a north alternate via the INT of the Holly Springs VOR 099° and the Birmingham VOR 313° radials.

43. Section 600.6179 is amended to read:

§ 600.6179 VOR civil airway No. 179 (Paducah, Ky., to Bible Grove, Ill.). From the Paducah, Ky., VOR via the Centralia, Ill., VOR; INT of the Centralia VOR 056° and the Bible Grove VOR 219° radials; to the Bible Grove, Ill., VOR.

44. Section 600.6191 is amended to read:

§ 600.6191 VOR civil airway No. 191 (Memphis, Tenn., to Milwaukee, Wis.).

From the Memphis, Tenn., VOR via the Walnut Ridge, Ark., VOR; Farmington, Mo., VOR; INT of the Farmington VOR 351° and the Troy VOR 215° radials; Troy, Ill., VOR; Roberts, Ill., VOR; point of INT of the Roberts VOR 008° and the Joliet, Ill., VOR direct radial to the Kedzie, Ill., RBN. From the Chicago, Ill., O'Hare International Airport TVOR via the point of INT of the Chicago Heights VOR 358° and the Milwaukee VOR 135° radials; to the Milwaukee, Wis., VOR.

45. Section 600.6198 is amended to read:

§ 600.6198 VOR civil airway No. 198 (San Simon, Ariz., to Houston, Tex.). From the San Simon, Ariz., VOR via the point of INT of the San Simon VOR 124° radial with the Cochise, Ariz., VOR direct radial to the Columbus, N. Mex., VOR; Columbus, N. Mex., VOR; El Paso, Tex., VOR; INT of the El Paso VOR 132° and the Hudspeth VOR 272° radials; Hudspeth, Tex., VOR; INT of the Hudspeth VOR 117° and the Fort Stockton VOR 274° radials; Fort Stockton, Tex., VOR; Rock Springs, Tex., VOR; point of INT of the Rock Springs VOR 090° with the San Antonio VOR direct radial to the Junction, Tex., VOR; San Antonio, Tex., VOR; Eagle Lake, Tex., VOR; INT of the Eagle Lake VOR 091° and the Houston VOR 271° radials; to the Houston, Tex., VOR.

46. Section 600.6214 is amended to read:

§ 600.6214 VOR civil airway No. 214 (Columbus, Ohio, to Pittsburgh, Pa.). From the Columbus, Ohio, Port Columbus Airport ILS localizer via the Zanesville, Ohio, VOR; INT of the Zanesville VOR 088° and the Pittsburgh VOR 244° radials; to the Pittsburgh, Pa., VOR.

47. Section 600.6216 is amended to read:

§ 600.6216 VOR civil airway No. 216 (Lamar, Colo., to Saginaw, Mich.). From the Lamar, Colo., VOR via the Hill City, Kans., VOR; Mankato, Kans., VOR; Pawnee City, Nebr., VOR; Lamoni, Iowa, VOR; Ottumwa, Iowa, VOR; to the Iowa City, Iowa, VOR. From the Janesville, Wis., VOR via the INT of the Janesville VOR 076° and the Muskegon VORTAC 254° radials; Muskegon, Mich., VORTAC; to the Saginaw, Mich., VOR.

48. Section 600.6257 is amended to read:

§ 600.6257 VOR civil airway No. 257 (Drake, Ariz., to Delta, Utah). From the Drake, Ariz., VOR via the Bryce Canyon, Utah, VOR; to the Delta, Utah, VOR.

49. Section 600.6424 is added to read:

§ 600.6424 VOR civil airway No. 424 (Blue Springs, Mo., to Macon, Mo.). From the Blue Springs, Mo., VOR via the Marshall, Mo., VORTAC; to the Macon, Mo., VOR. The portion of this airway which lies within the geographic limits of and between the designated altitudes of, the Lake City Restricted Area (R-307) is excluded during its time of designation.

50. Section 600.6426 is amended to read:

§ 600.6426 *VOR civil airway No. 426 (St. Louis, Mo., to Witt, Ill.).* From the St. Louis, Mo., VOR to the INT of the St. Louis VOR 062° radial with the Troy, Ill., VOR direct radial to the Roberts, Ill., VOR.

51. Section 600.6428 is added to read:

§ 600.6428 *VOR civil airway No. 428 (Elmira, N. Y., to Munsville, N. Y.).* From the Elmira, N. Y., VOR via the Ithaca, N. Y., VOR to the point of INT of the Binghamton, N. Y., VOR 023° and the Syracuse, N. Y., VOR 117° radials.

52. Section 600.6091 *VOR civil airway No. 91 (New York, N. Y., to Montreal, Quebec, Canada)* is amended by changing all after "Burlington, Vt., omnirange station;" to read: "Burlington, Vt., VOR; Plattsburg, N. Y., VOR, Montreal, Quebec, Canada, VOR, including an east alternate from the Burlington VOR to the Montreal VOR via the INT of the Burlington VOR 353° and the Montreal VOR 146° radials."

(Sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interpret or apply sec. 302, 52 Stat. 985, as amended; 49 U. S. C. 452)

This amendment shall become effective 0001 e. s. t. November 20, 1958.

[SEAL] WILLIAM B. DAVIS,
Acting Administrator
of Civil Aeronautics.

OCTOBER 20, 1958.

[F. R. Doc. 58-8792; Filed, Oct. 23, 1958; 8:46 a. m.]

[Amdt. 20]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, AND POSITIVE CONTROL ROUTE SEGMENTS

ALTERATIONS

The control area, control zone and reporting point alterations appearing hereinafter have been coordinated with the civil operators involved, the Army, the Navy, and the Air Force, through the Air Coordinating Committee, Airspace Division, and are adopted to become effective when indicated in order to promote safety. Compliance with the notice, procedures and effective date provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to public interest and therefore is not required.

Part 601 is amended as follows:

1. Section 601.201 *Red civil airway No. 1 control areas (Big Spring, Tex., to San Antonio, Tex.)* is revoked.

2. Section 601.217 is amended by changing the caption to read: "Red civil airway No. 17 control areas (Rantoul, Ill., to Baltimore, Md.)."

3. Section 601.222 is amended by changing the caption to read: "Red civil airway No. 22 control areas (Mount Clemens, Mich., to Buffalo, N. Y.)."

4. Section 601.234 is amended by changing the caption to read: "Red civil

airway No. 34 control areas (Pulaski, Va., to Weeksville, N. C.)."

5. Section 601.238 *Red civil airway No. 38 control areas (Big Spring, Tex., to San Antonio, Tex.)* is revoked.

6. Section 601.268 is amended to read:

§ 601.268 *Red civil airway No. 68 control areas (Palo Pinto, Tex., to Shreveport, La.).* All of Red civil airway No. 68.

7. Section 601.606 is amended by changing the caption to read: "Blue civil airway No. 6 control areas (Springfield, Ill., to Muskegon, Mich.)."

8. Section 601.681 *Blue civil airway No. 81 control areas (Charleston, W. Va., to Akron, Ohio)* is revoked.

9. Section 601.1080 is amended to read:

§ 601.1080 *Control area extension (Louisville, Ky.).* All of the airspace lying within a 35-mile radius of Standiford Field, Louisville, Ky. The portion of this control area extension which lies within the geographic limits of, and between the designated altitudes of, the Fort Knox Restricted Area (R-64) is excluded during the restricted area's time of designation.

10. Section 601.1102 *Control area extension (Minneapolis, Minn.)* is amended by changing the last portion to read: "and the airspace north of Minneapolis bounded on the northwest by VOR civil airway No. 13-W, on the east by Blue civil airway No. 9 and on the southwest by VOR civil airway No. 26-N."

11. Section 601.1130 is amended to read:

§ 601.1130 *Control area extension (Spokane, Wash.).* The airspace within a radius of 45 nautical miles centered on the Fairchild AFB, Spokane, Wash. The portions of this control area extension which lie within the Spokane (Geiger Field) Restricted Area/Military Climb Corridor (R-538) shall be used only after obtaining prior authority from the controlling agency.

12. Section 601.1449 is amended to read:

§ 601.1449 *Control area extension (New Philadelphia, Ohio).* The airspace south of Akron, Ohio, bounded on the north and northeast by VOR civil airway No. 92, on the south by VOR civil airway No. 210, and on the west by VOR civil airway No. 59.

13. Section 601.1155 is amended to read:

§ 601.1155 *Control area extension (Omaha, Nebr.).* The airspace lying within a 25-mile radius of the Omaha RR including the airspace south and southwest of Omaha bounded on the east by VOR civil airway No. 15, on the south by latitude 40°00'00" on the west by longitude 98°00'00", and on the north by VOR civil airway No. 6.

14. Section 601.1185 *Control area extension (Utah Lake, Utah)* is revoked.

15. Section 601.1185 is added to read:

§ 601.1185 *Control area extension (Provo, Utah).* Within 5 miles either side of the 125° True radial of the Provo VOR extension from the VOR to a point 25 miles southeast.

16. Section 601.1210 *Control area extension (Olathe, Kans.)* is amended by changing the first portion which reads: "That airspace not presently controlled bounded on the northwest by a line extending from the St. Joseph, Mo., omnirange station to a point at latitude 39° 28'00", longitude 96°25'00", on the west by a line extending from that point to the Emporia, Kans., omnirange station and by the eastern edge of the Wichita, Kans., control area extension," to read: "That airspace not presently controlled bounded on the north by the St. Joseph, Mo., VOR 258° radial, on the west by the Emporia, Kans., VOR 346° radial and the eastern edge of the Wichita, Kans., control area extension."

17. Section 601.1107 *Control area extension (Topeka, Kans.)* is revoked.

18. Section 601.1453 *Control area extension (Marquette, Mich.)* is amended by changing the words which read: "to 2400 c. s. t. November 30, 1958," to read: "to 2400 c. s. t. November 1, 1958."

19. Section 601.1985 *Five-mile radius zones* is amended by changing "Reading, Pa.: Reading Municipal Airport" to read: "Reading, Pa.: General Spaatz Airport."

20. Section 601.2037 is amended to read:

§ 601.2037 *San Angelo, Tex., control zone.* Within a 10-mile radius of Mathis Field to and including a 5-mile radius of Goodfellow AFB, San Angelo, Tex., and within 2 miles either side of the San Angelo VOR 72° radial extending to a point 10 miles east of the VOR.

21. Section 601.2134 is amended to read:

§ 601.2134 *Charleston, S. C., control zone.* Within a 5-mile radius of the Charleston Municipal Airport, within 2 miles either side of the Charleston RR northwest course extending to the Summerville FM, and within 2 miles either side of the Charleston VOR 341° radial extending to a point 10 miles northwest of the VOR.

22. Section 601.2234 *Miami, Fla., control zone* is amended by changing "MCAS Miami, Fla. (Opa Locka Airport)," to read: "NARF Miami, Fla., Opa Locka Airport."

23. Section 601.2295 *Andrews, Md., control zone* is revoked.

24. Section 601.2295 is added to read:

§ 601.2295 *Camp Springs, Md., control zone.* Within a 5-mile radius of Andrews AFB, and within 2½ miles either side of the north course of the Andrews AFB RR extending from the RR to the 5-mile radius zone, excluding the portion bounded on the northeast by a line 1¼ miles northeast of and parallel to the NW/SE Runway of Hyde Field, Clinton, Md., and bounded on the northwest and southeast by lines 1¼ miles northwest of and southeast of and parallel to the runway ends, and excluding the portion which overlaps the Washington National Airport control zone.

25. Section 601.2331 is amended to read:

§ 601.2331 *Lake Charles, La., control zone.* Within a 5-mile radius of Chen-

nault AFB, Lake Charles, La., within 2 miles either side of the 180° bearing extending from the Lake Charles RBN to a point 10 miles south, and within 2 miles either side of the 334° and 154° radials of the Lake Charles VOR extending to a point 10 miles southeast of the VOR and to a point 10 miles northwest of the Gillis RBN.

26. Section 601.2424 *Marquette, Mich., control zone* is amended by changing the words which read: "to 2400 c. s. t. November 30, 1958," to read: "to 2400 c. s. t. November 1, 1958."

27. Section 601.4201 *Red civil airway No. 1 (Big Spring, Tex., to San Antonio, Tex.)* is revoked.

28. Section 601.4217 is amended to read:

§ 601.4217 *Red civil airway No. 17 (Rantoul, Ill., to Baltimore, Md.)*. The INT of a line bearing 11° from the Springfield, Va., RBN and the west course of the Baltimore, Md., RR; Baltimore, Md., RR.

29. Section 601.4222 is amended to read:

§ 601.4222 *Red civil airway No. 22 (Mount Clemens, Mich., to Buffalo, N. Y.)*. No reporting point designation.

30. Section 601.4234 is amended by changing the caption to read: "*Red civil airway No. 34 (Pulaski, Va., to Weeksville, N. C.)*."

31. Section 601.4238 *Red civil airway No. 38 (Big Spring, Tex., to San Antonio, Tex.)* is revoked.

32. Section 601.4268 is amended to read:

§ 601.4268 *Red civil airway No. 68 (Palo Pinto, Tex., to Shreveport, La.)*. No reporting point designation.

33. Section 601.4270 is amended to read:

§ 601.4270 *Red civil airway No. 70 (Midland, Tex., to Lubbock, Tex.)*. Midland, Tex., RR.

34. Section 601.4606 is amended to read:

§ 601.4606 *Blue civil airway No. 6 (Springfield, Ill., to Muskegon, Mich.)*. No reporting point designation.

35. Section 601.4639 is amended to read:

§ 601.4639 *Blue civil airway No. 39 (Augusta, Ga., to Elmira, N. Y.)*. No reporting point designation.

36. Section 601.4681 *Blue civil airway No. 81 (Charleston, W. Va., to Akron, Ohio)* is revoked.

37. Section 601.5001 *Other reporting points* is amended by adding the following compulsory reporting point: "South Pass West Jetty, La., RBN."

38. Section 601.6005 is amended to read:

§ 601.6005 *VOR civil airway No. 5 control areas (Jacksonville, Fla., to London, Ont.)*. All of VOR civil airway No. 5 including east and west alternates, but excluding the airspace between the main airway and its east alternate from the

Jacksonville, Fla., VOR to the Macon, Ga., VOR; excluding the airspace between the main airway and its west alternate from the Alma, Ga., VOR to the Chattanooga, Tenn., VOR, and also excluding the airspace between the main airway and its east alternate from the Bowling Green, Ky., VOR to the Louisville, Ky., VOR.

39. Section 601.6013 is amended to read:

§ 601.6013 *VOR civil airway No. 13 control areas (Houston, Tex., to Duluth, Minn.)*. All of VOR civil airway No. 13 including east and west alternates, but excluding the airspace between the main airway and the west alternate from the Des Moines, Iowa, VOR to the Mason City, Iowa, VOR, and also excluding the airspace between the main airway and the west alternate from the Mason City, Iowa, VOR to the Grantsburg, Wis., VOR.

40. Section 601.6035 is amended to read:

§ 601.6035 *VOR civil airway No. 35 control areas (Key West, Fla., to Syracuse, N. Y.)*. All of VOR civil airway No. 35 including east and west alternates. The airspace below 2,000 feet mean sea level which lies beyond the continental limits of the United States is excluded.

41. Section 601.6050 is amended to read:

§ 601.6050 *VOR civil airway No. 50 control areas (St. Joseph, Mo., to Dayton, Ohio)*. All of VOR civil airway No. 50 including a north and a south alternate.

42. Section 601.6051 is amended to read:

§ 601.6051 *VOR civil airway No. 51 control areas (Key West, Fla., to Chicago, Ill.)*. All of VOR civil airway No. 51 including east and west alternates, but excluding the airspace between the main airway and its east alternate from the Jacksonville, Fla., VOR to the Macon, Ga., VOR and also excluding the airspace between the main airway and its west alternate from the Alma, Ga., VOR to the Chattanooga, Tenn., VOR.

43. Section 601.6052 is amended to read:

§ 601.6052 *VOR civil airway No. 52 control areas (Des Moines, Iowa, to Evansville, Ind.)*. All of VOR civil airway No. 52 including north alternates and also a south alternate.

44. Section 601.6091 is amended to read:

§ 601.6091 *VOR civil airway No. 91 control areas (New York, N. Y., to Montreal, Quebec)*. All of VOR civil airway No. 91 including east alternates and also a west alternate.

45. Section 601.6094 is amended to read:

§ 601.6094 *VOR civil airway No. 94 control areas (Casa Grande, Ariz., to Monroe, La.)*. All of VOR civil airway No. 94.

46. Section 601.6134 is amended to read:

§ 601.6134 *VOR civil airway No. 134 control areas (Evergreen, Ala., to Athens, Ga.)*. All of VOR civil airway No. 134.

47. Section 601.6176 is added to read:

§ 601.6176 *VOR civil airway No. 176 control areas (Memphis, Tenn., to Birmingham, Ala.)*. All of VOR civil airway No. 176 including a north and a south alternate.

48. Section 601.6179 is amended to read:

§ 601.6179 *VOR civil airway No. 179 control areas (Paducah, Ky., to Bible Grove, Ill.)*. All of VOR civil airway No. 179.

49. Section 601.6191 is amended to read:

§ 601.6191 *VOR civil airway No. 191 control areas (Memphis, Tenn., to Milwaukee, Wis.)*. All of VOR civil airway No. 191.

50. Section 601.6198 is amended to read:

§ 601.6198 *VOR civil airway No. 198 control areas (San Simon, Ariz., to Houston, Tex.)*. All of VOR civil airway No. 198.

51. Section 601.6214 is amended to read:

§ 601.6214 *VOR civil airway No. 214 control areas (Columbus, Ohio to Pittsburgh, Pa.)*. All of VOR civil airway No. 214.

52. Section 601.6216 is amended to read:

§ 601.6216 *VOR civil airway No. 216 control areas (Lamar, Colo., to Saginaw, Mich.)*. All of VOR civil airway No. 216.

53. Section 601.6257 is amended to read:

§ 601.6257 *VOR civil airway No. 257 control areas (Drake, Ariz., to Delta, Utah)*. All of VOR civil airway No. 257.

54. Section 601.6424 is added to read:

§ 601.6424 *VOR civil airway No. 424 control areas (Blue Springs, Mo., to Macon, Mo.)*. All of VOR civil airway No. 424.

55. Section 601.6426 is amended to read:

§ 601.6426 *VOR civil airway No. 426 control areas (St. Louis, Mo., to Witt, Ill.)*. All of VOR civil airway No. 426.

56. Section 601.6428 is added to read:

§ 601.6428 *VOR civil airway No. 428 control areas (Elmira, N. Y., to Munsville, N. Y.)*. All of VOR civil airway No. 428.

57. Section 601.7001 *VOR domestic reporting points* is amended by adding the following reporting points:

Columbus, Miss., VOR.
Holly Springs, Miss., VOR.
McDonough, Ga., VOR.
Bennington Intersection: The intersection of the Rochester, N. Y., VOR 238° T and the Buffalo, N. Y., VOR 124° T radials.
Dog Intersection: The intersection of the New Orleans, La., VOR 085° T and the Mobile, Ala., VOR 224° T radials.

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Emerson Intersection: The intersection of the Wilmington, N. C., VOR 261° T and the Myrtle Beach, S. C., VOR 023° T radials.

Grand Island Intersection: The intersection of the Dunkirk, N. Y., VOR 028° T and the Buffalo, N. Y., VOR 294° T radials.

by changing the following reporting points to read:

Lancaster Intersection: The intersection of the Harrisburg, Pa., VOR 107° T and the Allentown, Pa., VOR 228° T radials.

Lisbon Intersection: The intersection of the Herndon, Va., VOR 038° T radial with the Baltimore, Md., VOR direct radial to the Martinsburg, W. Va., VOR.

and by revoking the following reporting points:

Andrews Intersection: The intersection of the Baltimore, Md., VOR 196° T and the Washington, D. C., TVOR 140° T radials. Valle, Ariz., VOR.

53. Section 601.8001 is amended by changing the following positive control route segment to read: "VOR civil airway No. 1510 (Los Angeles, Calif., to New York, N. Y.) (See § 600.6610 of this chapter.) The portion of VOR civil airway No. 1510 from the point of INT of the Los Angeles, Calif., VOR 057° and the Long Beach, Calif., VOR 024° radials to the Colts Neck, N. J., VOR, including a north alternate from the Iowa City, Iowa, VOR to the Waterville, Ohio, VOR."

(Sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interpret or apply sec. 601, 52 Stat. 1007, as amended; 49 U. S. C. 551)

This amendment shall become effective 0001 e. s. t., November 20, 1958.

[SEAL] WILLIAM B. DAVIS,
Acting Administrator
of Civil Aeronautics.

OCTOBER 20, 1958.

[F. R. Doc. 58-8793; Filed, Oct. 23, 1958; 8:46 a. m.]

[Amdt. 1]

PART 602—ESTABLISHMENT OF CODED JET ROUTES AND NAVIGATIONAL AIDS IN THE CONTINENTAL CONTROL AREA

ALTERATIONS

The coded jet route and navigational aid alterations appearing hereinafter have been coordinated with the civil operators involved, the Army, the Navy and the Air Force, through the Air Coordinating Committee, Airspace Division, and are adopted to become effective when indicated in order to promote safety. Compliance with the notice, procedures and effective date provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to public interest and therefore is not required.

Part 602 is amended as follows:

1. Section 602.11 *Description of points and intersections* is amended under item (b), L/MF radio range stations, by adding the following points:

El Morro, N. Mex., RR.
Front Royal, Va., RR.

and by revoking the following points:

Washington (Arcola), D. C., RR.
Zuni, N. Mex., RR.

2. Section 602.160 *L/MF jet route No. 6 (Palmdale, Calif., to Washington, D. C.)* is amended by changing the name "Zuni, N. Mex., RR;" to read: "El Morro, N. Mex., RR;" and by changing the portion which reads: "to the Washington, D. C. (Arcola), RR." to read: "to the Front Royal, Va., RR."

3. Section 602.124 *L/MF jet route No. 24 (Gila Bend, Ariz., to Norfolk, Va.)* is amended by changing the name "Zuni, N. Mex., RR;" to read: "El Morro, N. Mex., RR;"

(Sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interpret or apply sec. 302, 52 Stat. 983, as amended; 49 U. S. C. 452)

This amendment shall become effective upon publication in the FEDERAL REGISTER.

[SEAL] WILLIAM B. DAVIS,
Acting Administrator
of Civil Aeronautics.

OCTOBER 20, 1958.

[F. R. Doc. 58-8798; Filed, Oct. 23, 1958; 8:47 a. m.]

[Amdt. 2]

PART 602—ESTABLISHMENT OF CODED JET ROUTES AND NAVIGATIONAL AIDS IN THE CONTINENTAL CONTROL AREA

ALTERATIONS

The jet route alteration appearing hereinafter has been coordinated with the civil operators involved, the Army, the Navy, and the Air Force, through the Air Coordinating Committee, Airspace Division, and is adopted to become effective when indicated in order to promote safety. Compliance with the notice, procedures, and effective date provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to public interest and therefore is not required.

Part 602 is amended as follows:

1. Section 602.567 is added to read:

§ 602.567 *VOR/VORTAC jet route No. 67 (New York, N. Y., to Presque Isle, Maine.)* From the Idlewild, N. Y., VOR via the Boston, Mass., VOR; INT of the Boston VOR 014° and the Bangor VOR 225° radials; Bangor, Maine, VOR; Presque Isle, Maine, VOR; to the point

of INT of the Presque Isle VOR 357° radial with the United States-Canadian Border.

2. Section 602.575 is added to read:

§ 602.575 *VOR/VORTAC jet route No. 75 (New York, N. Y., to Plattsburg, N. Y.)*. From the Idlewild, N. Y., VOR via the Albany, N. Y., VOR; Plattsburg, N. Y., VOR; to the point of INT of the Plattsburg VOR 341° radial with the United States-Canadian Border.

3. Section 602.577 is added to read:

§ 602.577 *VOR/VORTAC jet route No. 77 (New York, N. Y., to the United States-Canadian Border)*. From the Idlewild, N. Y., VOR via the Boston, Mass., VOR; INT of the Boston VOR 014° and the Bangor VOR 225° radials; Bangor, Maine, VOR; to the point of INT of the Bangor VOR 060° radial with the United States-Canadian Border.

4. Section 602.562 is added to read:

§ 602.562 *VOR/VORTAC jet route No. 62 (New York, N. Y., to Nantucket, Mass.)*. From the Idlewild, N. Y., VOR via the INT of the Idlewild VOR 083° and the Nantucket VOR 252° radials; to the Nantucket, Mass., VOR.

(Sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interpret or apply sec. 302, 52 Stat. 983, as amended; 49 U. S. C. 452)

This amendment shall become effective 0001 e. s. t. October 24, 1958.

[SEAL] WILLIAM B. DAVIS,
Acting Administrator
of Civil Aeronautics.

OCTOBER 21, 1958.

[F. R. Doc. 58-8843; Filed, Oct. 23, 1958; 8:57 a. m.]

[Amdt. 237]

PART 608—RESTRICTED AREAS

WASHINGTON

The restricted area alteration appearing hereinafter has been coordinated with the civil operators involved, the Army, the Navy and the Air Force, through the Air Coordinating Committee, Airspace Division, and is adopted to become effective when indicated in order to promote safety of the flying public. Since a military function of the United States is involved, compliance with the notice, procedure, and effective date provisions of section 4 of the Administrative Procedure Act is not required.

Part 608 is amended as follows:

In § 608.55, the Spokane (Geiger Field) Restricted Area/Military Climb Corridor, Washington (R-532), is added to read:

Name and location (chart)	Description by geographical coordinates	Designated altitudes	Time of designation	Controlling agency
Spokane (Gelger Field) Restricted Area/Military Climb Corridor, Washington (R-538) (Spokane).	The area centered on the 351° True radial of the Spokane, Washington Omirange from the northern edge of the Spokane Control Zone to a point 25 statute miles north thereof and being 2.5 miles wide at the Control Zone and expanding to a width of 5.8 miles.	The area shall include the airspace between the following altitudes only: 4,500 feet MSL to 18,500 feet MSL from the Spokane Control Zone to a point one mile north thereof. 4,500 feet MSL to 18,500 feet MSL from a point 1 mile to a point 3 miles from the Control Zone. 4,500 feet MSL to 25,000 feet MSL from a point 3 miles to a point 5 miles from the Control Zone. 8,500 feet MSL to 27,000 feet MSL from a point 5 miles to a point 10 miles from the Control Zone. 12,500 feet MSL to 27,000 feet MSL from a point 10 miles to a point 15 miles from the Control Zone. 17,500 feet MSL to 27,000 feet MSL from a point 15 miles to a point 20 miles from the Control Zone. 21,500 feet MSL to 27,000 feet MSL from a point 20 miles to a point 25 miles from the Control Zone.	Continuous.	Spokane Approach Control, Washington.

(Sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interprets or applies sec. 601, 52 Stat. 1007, as amended; 49 U. S. C. 551)

This amendment shall become effective at 0001 e. s. t. on November 20, 1958.

[SEAL]

WILLIAM B. DAVIS,

Acting Administrator of Civil Aeronautics.

OCTOBER 20, 1958.

[F. R. Doc. 58-8795; Filed, Oct. 23, 1958; 8:47 a. m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 7026]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

FLUIDLESS CONTACT LENSES, INC., ET AL.

Subpart—Advertising falsely or misleadingly: § 13.20 Comparative data or merits; § 13.110 Indorsements, approval, and testimonials; § 13.170 Qualities or properties of product or service; § 13.195 Safety; § 13.205 Scientific or other relevant facts; § 13.250 Success, use or standing; § 13.280 Unique nature or advantages.

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U. S. C. 45) [Cease and desist order, Fluidless Contact Lenses, Inc. (New York, N. Y.), et al., Docket 7026, September 24, 1958]

In the Matter of Fluidless Contact Lenses, Inc., a Corporation, Donald L. Golden and Norma Golden, Individually and as Officers of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging manufacturers in New York City with making a variety of misrepresentations in newspaper advertising and promotional materials concerning their "Airflo" contact lenses, including claims that the lenses could be fitted and worn all day without discomfort and irritation, were better than eyeglasses and other contact lenses, were unbreakable, were worn by prominent named actresses and athletes and over 100,000 persons, etc.

Following acceptance of an agreement providing for entry of a consent order, the hearing examiner made his initial decision and order to cease and desist which became on September 24 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondent Fluidless Non-Tact Lenses, Inc., formerly known as Fluidless Contact Lenses, Inc., a corporation, and its officers, and respondent Donald L. Golden, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly, or through any corporate or other device, in connection with the offering for sale, sale and distribution of their contact lenses known as "Airflo" or any other contact lenses of substantially the same construction or properties, do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing to be disseminated, any advertisement, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents directly or by implication that:

(a) Respondents' contact lenses can be fitted without discomfort.

(b) There is never irritation or discomfort from wearing respondents' lenses.

(c) All persons can wear respondents' lenses all day without discomfort; or that any person can wear respondents' lenses all day without discomfort except after that person has become fully adjusted thereto.

(d) Respondents' contact lenses will adhere to the eyes under all conditions and circumstances of use.

(e) Respondents' contact lenses will provide more protection to the eyes than eyeglasses under all circumstances.

(f) Respondents' contact lenses will provide more ventilation to the eyes than all other contact lenses.

(g) Respondents' contact lenses will correct all defects in vision.

(h) Respondents' contact lenses will correct defects in vision in all cases which require bifocal lenses.

(i) Respondents' contact lenses are unbreakable.

(j) Respondents' contact lenses are revolutionary or are a new type of corneal lenses.

(k) Respondents' contact lenses will give better correction of vision than eyeglasses, in all cases.

(l) Respondents' contact lenses can be tried without financial risk.

(m) Any named actresses, athletes or other persons wear and recommend respondents' contact lenses, unless such is the fact.

(n) Eyeglasses can always be discarded upon the purchase of respondents' contact lenses.

(o) Purchasers are protected as to safety of respondents' lenses by a policy of insurance.

(p) Grooving or channeling in contact lenses increases their weight or interferes with vision.

(q) The number of persons who have been fitted by respondents' lenses is greater than is the fact.

(r) Respondents' lenses are safer, more comfortable or better fitting than other contact lenses for the reason that they do not rest upon the pupil of the eye.

2. Disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said contact lenses, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to the respondent Norma Golden.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the respondents Fluidless Non-Tact Lenses, Inc., formerly known as Fluidless Contact Lenses, Inc., a corporation, and Donald L. Golden, individually and as an officer of corporate respondent, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have

complied with the order to cease and desist.

Issued: September 24, 1958.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F. R. Doc. 58-8813; Filed, Oct. 23, 1958;
8:50 a. m.]

[Docket 7111]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

CAPITOL FUR SHOP, INC., AND
NORMAN SILVERMAN

Subpart—Advertising falsely or misleadingly: § 13.155 Prices: Exaggerated as regular and customary; fictitious marking. Subpart—Invoicing products falsely: § 13.1108 Invoicing products falsely: Fur Products Labeling Act. Subpart—Misbranding or mislabeling: § 13.1280 Price. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 Formal regulatory and statutory requirements: Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U. S. C. 45, 69f) [Cease and desist order, Capitol Fur Shop, Inc., et al., Washington, D. C., Docket 7111, September 24, 1958]

In the Matter of Capitol Fur Shop, Inc., a Corporation, and Norman Silverman, Individually and as an Officer of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a furrier in Washington, D. C., with violating the Fur Products Labeling Act by labeling fur products with fictitious prices, by failing to comply with the invoicing requirements of the Act, and by advertising in newspapers which represented prices as reduced from regular prices which were, in fact, fictitious.

Following acceptance of an agreement containing consent order, the hearing examiner made his initial decision and order to cease and desist which became on September 24 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondents Capitol Fur Shop, Inc., a corporation, and its officers and Norman Silverman, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution of fur products in commerce, or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product"

are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

(1) Representing on labels affixed to the fur products or in any other manner, that certain amounts are their regular and usual prices when such amounts are in excess of the prices at which respondents usually and customarily sold such products in the recent regular course of their business;

B. Falsely or deceptively invoicing fur products by:

(1) Failing to furnish purchasers of fur products invoices showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;

(b) That the fur product contains, or is composed of used fur, when such is the fact;

(c) That the fur product contains, or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(e) The name and address of the person issuing such invoice;

(f) The name of the country of origin of any imported furs contained in the fur product;

(g) The item number or mark assigned to the fur product, as required by Rule 40 (a) of the rules and regulations;

(2) Setting forth information required under section 5 (b) (1) of the Fur Products Labeling Act and the Rules and Regulations thereunder in abbreviated form;

(3) Failing to set forth the description "dyed mouton processed lamb" in the manner and form provided for in Rule 9 of the rules and regulations;

(4) Failing to set forth the description "dyed broadtail processed lamb" in the manner and form provided for in Rule 10 of the rules and regulations;

C. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement, or notice, which is intended to aid, promote, or assist, directly or indirectly, in the sale, or offering for sale of fur products, and which:

(1) Represents, directly or by implication, that their regular or usual price of any fur product is any amount which is in excess of the price at which the respondents have usually and customarily sold such product in the recent and regular course of their business.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondents Capitol Fur Shop, Inc., a corporation, and Norman Silverman, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they

have complied with the order to cease and desist.

Issued: September 24, 1958.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F. R. Doc. 58-8814; Filed, Oct. 23, 1958;
8:51 a. m.]

[Docket 7131]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

SAM GOLDEN & SON, INC., AND HAROLD
GOLDEN

Subpart—Invoicing products falsely: § 13.1108 Invoicing products falsely: Federal Trade Commission Act. Subpart—Misbranding or mislabeling: § 13.1212 Formal regulatory and statutory requirements: Wool Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 Formal regulatory and statutory requirements: Wool Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, secs. 2-5, 54 Stat. 1128-1130; 15 U. S. C. 45, 69-68 (c)) [Cease and desist order, Sam Golden & Son, Inc., et al., Woonsocket, R. I., Docket 7131, September 24, 1958]

In the Matter of Sam Golden & Son, Inc., a Corporation, and Harold Golden, Individually and as an Officer of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging distributors of woolen stocks in Woonsocket, R. I., with failing to comply with the labeling requirements of the Wool Products Labeling Act and with misrepresenting the fiber content of their products by invoicing as "90% wool", products which contained reprocessed and reused wool.

Following acceptance of an agreement containing a consent order, the hearing examiner made his initial decision and order to cease and desist which became on September 24 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondents Sam Golden & Son, Inc., a corporation, and its officers, and Harold Golden, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of woolen stocks, or other "wool products" as such products are defined in, and subject to, said Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

1. Failing to securely affix to or place on each such product a stamp, tag, label

or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five per centum or more; and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool product of any non-fibrous loading, filling or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution, or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Sam Golden & Son, Inc., a corporation, and its officers, and Harold Golden, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of woolen stocks or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or the amount of the constituent fibers contained in such products, on invoices or sales memoranda applicable thereto, or in any other manner.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered that the above-named respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: September 24, 1958.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[P. R. Doc. 58-8815; Filed, Oct. 23, 1958;
8:51 a. m.]

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

Subchapter C—Drugs

PART 146a—CERTIFICATION OF PENICILLIN AND PENICILLIN-CONTAINING DRUGS

PROCAINE PENICILLIN IN STREPTOMYCIN (OR DIHYDROSTREPTOMYCIN) SULFATE SOLUTION

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended;

sec. 701, 52 Stat. 1055, as amended; 21 U. S. C. 357, 371) and delegated to the Commissioner of Food and Drugs by the Secretary (22 F. R. 1045), § 146a.67 *Procaine penicillin in streptomycin sulfate solution* * * * (21 CFR 146a.67) is amended in the following respects:

1. Paragraph (a) *Standards of identity* * * * is amended by changing the period at the end of the third sentence to a comma and adding thereto the following clause: "and, if it is intended solely for veterinary use, it may contain a suitable antihistaminic and cortisone or a suitable derivative of cortisone."

2. In paragraph (c) *Labeling*, subparagraph (1) (iii) is changed to read as follows:

(iii) If the drug contains an antihistaminic, preservatives, added procaine hydrochloride, or cortisone or a derivative of cortisone, the name and quantity of each such added ingredient.

3. Paragraph (c) (1) is further amended by adding thereto the following new subdivisions: (vii), (viii), and (ix):

(vii) If it contains an antihistaminic or cortisone or a derivative of cortisone, the statement "For use only in cats, dogs, and horses; not for use in horses to be slaughtered for human consumption."

(viii) The statement "Caution: Federal law prohibits dispensing without prescription," unless it is packaged for dispensing and it is intended solely for veterinary use and is conspicuously so labeled.

(ix) If it is intended solely for veterinary use and it contains an antihistaminic or cortisone or a derivative of cortisone, the statement "Caution: Federal law restricts this drug to sale by or on the order of a licensed veterinarian."

4. Paragraph (c) (2) is changed to read as follows:

(2) On the outside wrapper or container, the statement "Store in refrigerator not above 15° C. (59° F.)" or "Store below 15° C. (59° F.)."

5. Paragraph (c) (3) (ii) is amended by changing the period at the end of the first sentence to a comma and adding thereto the following clause: "unless it contains an antihistaminic or cortisone or a derivative of cortisone."

6. Paragraph (c) is further amended by adding thereto the following new subparagraph (4):

(4) On the label and labeling, if it contains an antihistaminic or cortisone or a derivative of cortisone, after the name "procaine penicillin in streptomycin sulfate solution," or "procaine penicillin in dihydrostreptomycin sulfate solution," wherever such name appears, the words "with _____," in juxtaposition with such name, the blank being filled in with the common or usual name of each such ingredient.

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since it was drawn in collaboration with interested members of the affected industry and since it would be against public in-

terest to delay providing for these amendments.

Effective date. This order shall become effective upon publication in the FEDERAL REGISTER, since both the public and the affected industry will benefit by the earliest effective date, and I so find.

(Sec. 701, 52 Stat. 1055, as amended; 21 U. S. C. 371. Interprets or applies sec. 507, 59 Stat. 463, as amended; 21 U. S. C. 357)

Dated: October 17, 1958.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F. R. Doc. 58-8800; Filed, Oct. 23, 1958;
8:48 a. m.]

TITLE 29—LABOR

Chapter I—National Labor Relations Board

PART 102—RULES AND REGULATIONS, SERIES 7

RECORDS AND INFORMATION

By virtue of the authority vested in it by the National Labor Relations Act, 49 Stat. 452, approved July 5, 1935, as amended by the Labor Management Relations Act, 1947, Public Law 101, Eightieth Congress, first session, the National Labor Relations Board hereby issues the following further amendment to its Rules and Regulations, Series 7, as amended, which it finds necessary to carry out the provisions of said act, such amendment to be effective October 24, 1958.

National Labor Relations Board Rules and Regulations, Series 7, as amended, and as hereby further amended, shall be in force and effect until further amended, or rescinded by the Board.

Dated, Washington, D. C., October 21, 1958.

By the direction of the Board.

[SEAL] OGDEN W. FIELDS,
Acting Executive Secretary.

In Subpart I—Records and Information, § 102.95 is amended as follows:

At the end of § 102.95 *Same; Board employees prohibited from producing files, records, etc., pursuant to subpoena ad testificandum or subpoena duces tecum, prohibited from testifying in regard thereto*, delete the period, substitute a colon and add "Provided, after a witness called by the general counsel has testified in a hearing upon a complaint under section 10 (c) of the act the respondent may move for the production of any statement of such witness in possession of the general counsel, if such statement has been reduced to writing and signed or otherwise approved or adopted by the witness. Such motion shall be granted by the trial examiner. If the general counsel declines to furnish the statement, the testimony of the witness shall be stricken."

(Sec. 6, 49 Stat. 452, as amended; 29 U. S. C. 156)

The above amendment shall be effective October 24, 1958.

[F. R. Doc. 58-8844; Filed, Oct. 23, 1958;
8:57 a. m.]

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 202—ANCHORAGE REGULATIONS

PART 203—BRIDGE REGULATIONS

PART 207—NAVIGATION REGULATIONS

MISCELLANEOUS AMENDMENTS

1. Pursuant to the provisions of section 7 of the River and Harbor Act of March 4, 1915 (38 Stat. 1053; 33 U. S. C. 471), § 202.250 establishing and governing the use of anchorage areas in St. Thomas Harbor, Virgin Islands, is hereby amended prescribing a small-craft anchorage in Long Bay, as follows:

§ 202.250 *St. Thomas Harbor, Charlotte Amalie, Virgin Islands*—(a) *The anchorage grounds.* . . .

(b) *Long Bay anchorage.* The waters of Long Bay bounded on the north by the southerly limit line of Anchorage E, on the west by the easterly limit line of Anchorage A to a point at latitude 18°20'18", thence to latitude 18°20'13", longitude 64°55'21", and thence to the shore line at latitude 18°20'15", longitude 64°55'13".

(c) *The regulations.* . . .

(d) The harbor regulations for the Port of St. Thomas, Virgin Islands of the United States and approaches thereto, including all waters under its jurisdiction, as adopted by the Government of the Virgin Islands, will apply to the Long Bay anchorage.

(5) In addition, the Long Bay anchorage is reserved for all types of small vessels, including sailing and motor pleasure craft, and such craft shall anchor in no other areas except Anchorage E, in the northern portion of the harbor of Charlotte Amalie.

(6) Floats for marking anchors in place will be allowed in the Long Bay anchorage; stakes or mooring piles are prohibited.

(7) Vessels not more than 65 feet in length are not required to exhibit or carry anchor lights within the Long Bay anchorage, but must display them if emergency requires anchoring in any other part of the harbor.

(8) The U. S. Coast Guard Captain of the Port of St. Thomas is hereby empowered, whenever the maritime or commercial interests of the United States so require, to shift the position of any vessel anchored within the Long Bay anchorage, and of any vessel which is so moored or anchored as to impede or obstruct vessel movement in the harbor.

[Regs., Oct. 3, 1958, 800.211—ENGWO] (Sec. 7, 38 Stat. 1053; 33 U. S. C. 471)

2. Pursuant to the provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U. S. C. 499), § 203.443 is hereby prescribed to govern the operation of the State Road Department of Florida highway bridge across the Intracoastal Waterway in Pompano Beach, Florida, as follows:

§ 203.443 *Intracoastal Waterway, Fla.; State Road Department of Florida highway bridge at Atlantic Boulevard in Pompano Beach, Fla.* (a) During the

period November 1 to May 31, both dates inclusive, except as provided in paragraphs (b) and (c) of this section, the owner of or agency controlling this bridge shall not be required to open the drawspan between the hours of 7:00 a. m. and 6:00 p. m., both inclusive, except on the hour and the half-hour.

(b) The draw shall be opened promptly upon the prescribed signal being given for the passage of towboats with tows and vessels owned or operated by the United States.

(c) The draw shall be opened promptly for the passage of a vessel in distress. Such vessels shall sound the opening signal two or more times at intervals of five (5) seconds. When weather conditions are such that sound signals may not be heard, such vessels shall signal for an opening by raising and lowering a number of times a lighted lantern by night and a flag by day.

(d) The owner of or agency controlling the bridge shall erect and maintain on both sides thereof, signs acceptable to the District Engineer setting forth the salient features of the special regulations of this section.

[Regs., Oct. 6, 1958, 800.211—ENGWO] (Sec. 5, 28 Stat. 362; 33 U. S. C. 499)

3. Pursuant to the provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U. S. C. 499), § 203.560, governing the operation of drawbridges across the Mississippi River and tributaries where constant attendance of drawtenders is not required, is hereby amended revising the operating regulations for the States of Wisconsin and Minnesota highway bridge at Stillwater, Minnesota, as follows:

§ 203.560 *Mississippi River and its tributaries and outlets; bridges where constant attendance of drawtenders is not required* . . .

(g) *Ohio River and Upper Mississippi River.* . . .

(13) *St. Croix River, Wis. and Minn.;* States of Wisconsin and Minnesota highway bridge at Stillwater, Minn. At least two hours' advance notice required, except between 8:00 a. m. and 2:00 p. m., and between 9:00 p. m. and midnight on Saturdays, Sundays, and Federal and State holidays, and between 1:00 p. m. and 9:00 p. m. on all other days, from May 15, to October 15, inclusive, when the regulations contained in § 203.555 shall govern the operation of this bridge except that between 2:00 p. m. and 9:00 p. m. on Saturdays, Sundays, and Federal and State holidays from May 15, to October 15, inclusive, the draw shall be opened only once every hour on the hour. During the period of hourly openings, the bridge tender will be in constant attendance and will open the draw at any time for emergencies. The hours indicated are central daylight saving time. Standard time is one hour earlier.

[Regs., Oct. 8, 1958, 800.211—ENGWO] (Sec. 5, 28 Stat. 362; 33 U. S. C. 499)

4. Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U. S. C. 1), § 207.615 is hereby prescribed establishing and governing the use and navigation of a naval restricted area in the Pacific Ocean around San Nicolas Island, California, as follows:

gation of a naval restricted area in the Pacific Ocean around San Nicolas Island, California, as follows:

§ 207.615 *Pacific Ocean, around San Nicolas Island, California, naval restricted area*—(a) *The area.* The waters of the Pacific Ocean around San Nicolas Island, California, extending about 3 miles seaward from the shoreline, described as follows:

Latitude	Longitude
33°10'10"	119°24'20"
33°10'10"	119°31'10"
33°12'00"	119°35'30"
33°14'20"	119°37'40"
33°16'40"	119°39'10"
33°19'10"	119°37'10"
33°20'10"	119°31'10"
33°17'40"	119°24'50"
33°13'50"	119°21'50"
33°10'10"	119°24'20"

(b) *The regulations.* (1) No vessels other than Naval Air Missile Test Center craft and those cleared for entry by the Commander, Naval Air Missile Test Center, or the Officer-in-Charge, San Nicolas Island, shall enter the area at any time except in an emergency, proceeding with extreme caution.

(2) Dredging, dragging, seining, or other fishing operations within these boundaries are prohibited.

(3) No seaplanes, other than those approved for entry by the Naval Air Missile Test Center may enter the area.

(4) The regulations shall be enforced by personnel attached to the Naval Air Missile Test Center, Point Mugu, California, and by such agencies as may be designated by the Commandant, Eleventh Naval District, San Diego, California.

[Regs., Oct. 6, 1958, 800.211—ENGWO] (Sec. 7, 40 Stat. 266; 33 U. S. C. 1)

[SEAL] HERBERT M. JONES,
Major General, U. S. Army,
The Adjutant General.

[F. R. Doc. 58-8789; Filed, Oct. 23, 1958; 8:45 a. m.]

TITLE 36—PARKS, FORESTS, AND MEMORIALS

Chapter III—Corps of Engineers, Department of the Army

PART 311—PUBLIC USE OF CERTAIN RESERVOIR AREAS

MISCELLANEOUS AMENDMENTS

1. Amend paragraph (c) of § 311.3 to read as follows:

§ 311.3 *Boats, private.* . . .

(c) Unsafe boats will not be permitted on the reservoir, and all boats permitted on the reservoir shall be equipped for safe operation and operated in a safe manner in accordance with instructions issued by the District Engineer. These instructions may provide that the operation of speed boats and water skiing activities shall be confined to areas of water designated by the District Engineer for such activities.

2. Amend paragraphs (a) and (b) of § 311.6 to read:

§ 311.6 *Hunting and fishing.* (a) Hunting and fishing are permitted in ac-

cordance with all applicable Federal, State and local laws for the protection of fish and game except in prohibited areas including the following:

(1) Public access, park and recreation areas in which all hunting is prohibited.

(2) Prohibited areas designated by the District Engineer in which hunting or fishing or both are prohibited.

(3) Prohibited areas designated by Federal or State managing agencies under applicable laws administered by such agencies.

(b) Hunting is restricted to the use of bow and arrow or shotgun loaded with shot in any reservoir area listed in § 311.1 except in managed game areas where the special hunting regulations of the managing agency with the prior approval of the District Engineer will apply, and except for the following reservoir areas on which hunting of deer with rifles is also permitted when not contrary to State or local laws or regulations.

(1) Wappapello Reservoir Area, St. Francis River, Missouri.

(2) Clearwater Reservoir Area, Black River, Missouri.

(3) Fort Peck Reservoir Area, Missouri River, Montana.

(4) Youghiogheny River Reservoir Area, Youghiogheny River, Pennsylvania.

(5) Tionesta Reservoir Area, Tionesta Creek, Pennsylvania.

(6) Loyallanna Reservoir Area, Loyallanna Creek, Pennsylvania.

(7) Mahoning Creek Reservoir Area, Mahoning Creek, Pennsylvania.

(8) Crooked Creek Reservoir Area, Crooked Creek, Pennsylvania.

(9) Bull Shoals Reservoir Area, White River, Missouri and Arkansas.

(10) Fort Randall Reservoir Area, Missouri River, South Dakota.

(11) Garrison Reservoir Area, Missouri River, North Dakota.

(12) Pine Flat Reservoir Area, Kings River, California.

(13) North Fork Reservoir Area, North Fork American River, California.

(14) Harry L. Englebright Reservoir Area, Yuba River, California.

(15) Conemaugh River Reservoir Area, Conemaugh River, Pennsylvania.

(16) Gavins Point Reservoir Area (Lewis and Clark Lake), Missouri River, South Dakota and Nebraska.

(17) Table Rock Reservoir Area, White River, Missouri and Arkansas.

[Regs., Oct. 5, 1958, ENGWO] (Sec. 209, 68 Stat. 1266; 16 U. S. C. 460d)

[SEAL] HERBERT M. JONES,
Major General, U. S. Army,
The Adjutant General.

[F. R. Doc. 58-8790; Filed, Oct. 23, 1958; 8:46 a. m.]

TITLE 50—WILDLIFE

Chapter I—Fish and Wildlife Service, Department of the Interior

PART 32—SOUTHWESTERN REGION

SUBPART—TISHOMINGO NATIONAL WILDLIFE REFUGE, OKLAHOMA

HUNTING

Notice was published in the FEDERAL REGISTER on September 16, 1958 (23 F. R. 7134), that pursuant to the authority

contained in section 10 of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1224; 16 U. S. C. 7151), and under authority delegated by Commissioner's Order 4 (22 F. R. 8126), it was proposed to adopt the regulation set forth below adding § 32.169 to Part 32—Southwestern Region. Interested persons were invited to submit in writing any comments, suggestions, or objections relating to the proposed regulation within 30 days of the date of publication of the notice in the FEDERAL REGISTER. No comments, suggestions, or objections were submitted within the 30-day period.

The revised regulation is hereby adopted without change as set forth below.

§ 32.169 *Hunting permitted.* Subject to compliance with the provisions of Parts 6, 18, and 21 of this chapter, the hunting of migratory game birds and resident game birds and mammals is permitted on the hereinafter described lands of the Tishomingo National Wildlife Refuge, Oklahoma, subject to the following conditions, restrictions, and requirements:

(a) *Hunting area.* The following described area is open to hunting: All of the lands of the Tishomingo National Wildlife Refuge lying west of old State Highway No. 99.

(b) *State laws.* Strict compliance with all State laws and regulations is required.

(c) *Hunting dogs.* Hunting dogs, not to exceed two per hunter, may be used for the purpose of hunting and retrieving, but such dogs shall not be permitted to run at large on the refuge.

(d) *Use of boats.* Subject to the provisions of Part 6 of this chapter, the use of boats for the purpose of hunting is permitted: Provided, That the use of airthrust or scull boats is prohibited.

(e) *Checking stations.* Hunters, upon entering or leaving the hunting area, shall report at such checking stations as may be established for regulating the hunting.

(f) *State cooperation.* State cooperation may be enlisted in the regulation, management, and operation of the public hunting area, and the State may promulgate such special regulations as may be necessary for such regulation, management, and operation. In the event such State regulations are promulgated, compliance therewith shall be a requisite to lawful entry for the purpose of hunting.

(Sec. 10, 45 Stat. 1224; 16 U. S. C. 7151)

Dated: October 20, 1958.

D. H. JANZEN,
Director, Bureau of Sport
Fisheries and Wildlife.

[F. R. Doc. 58-8798; Filed, Oct. 23, 1958; 8:47 a. m.]

PART 34—SOUTHEASTERN REGION

SUBPART—CHASSAHOVITZKA NATIONAL WILDLIFE REFUGE, FLORIDA

HUNTING

Notice was published in the FEDERAL REGISTER on September 16, 1958 (23 F. R.

7134), that pursuant to the authority contained in section 10 of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1224; 16 U. S. C. 7151), and under authority delegated by Commissioner's Order 4 (22 F. R. 8126), it was proposed to adopt the regulation set forth below adding Subpart—Chassahowitzka National Wildlife Refuge, Florida, and § 34.46 to Part 34—Southeastern Region. Interested persons were invited to submit in writing any comments, suggestions, or objections relating to the proposed regulation within 30 days of the date of publication of the notice in the FEDERAL REGISTER. No comments, suggestions, or objections were submitted within the 30-day period.

The revised regulation is hereby adopted without change as set forth below.

§ 34.46 *Hunting of migratory game birds permitted.* Subject to compliance with the provisions of Parts 6, 18, and 21 of this chapter, the hunting of migratory game birds is permitted on the hereinafter described lands of the Chassahowitzka National Wildlife Refuge, Florida, during the 1958-59 season only, subject to the following conditions, restrictions, and requirements:

(a) *Hunting area.* The following described area is open to hunting: Starting at the southwest corner of Section 30, Township 20 South, Range 17 East, Tallahassee meridian, thence north 34 chains to a point, thence west 22 chains to the place of beginning; thence in Township 20 South, Range 16 East, west 320 chains to a point, thence north 80 chains to a point, thence east 320 chains to a point, thence south 80 chains to the place of beginning.

(b) *State laws.* Strict compliance with all State laws and regulations is required.

(c) *Hunting dogs.* Hunting dogs, not to exceed two per hunter, may be used for the purpose of hunting and retrieving, but such dogs shall not be permitted to run at large on the refuge.

(d) *Use of boats.* Subject to the provisions of Part 6 of this chapter, the use of boats for the purpose of hunting is permitted: Provided, That any person who enters the public hunting area for the purpose of hunting may operate an airboat on the lands and waters of the United States only as may be authorized by a valid special permit issued by the officer in charge, which permit may limit the period during which such permit is valid and the area in which such airboats may operate: And provided further, That the use of speedboats and racing craft is prohibited except for official purposes.

(e) *Checking stations.* Hunters, upon entering or leaving the hunting area, shall report at such checking stations as may be established for regulating the hunting.

(f) *State cooperation.* State cooperation may be enlisted in the regulation, management, and operation of the public hunting area, and the State may promulgate such special regulations as may be necessary for such regulation, management, and operation. In the event such State regulations are promulgated, compliance therewith shall be a requisite

to lawful entry for the purpose of hunting.

(Sec. 10, 45 Stat. 1224; 16 U. S. C. 7151)

Dated: October 20, 1958.

D. H. JANZEN,
Director, Bureau of Sport
Fisheries and Wildlife.

[F. R. Doc. 58-8797; Filed, Oct. 23, 1958;
8:47 a. m.]

PART 35—NORTHEASTERN REGION

SUBPART—MISSISQUOI NATIONAL WILDLIFE REFUGE, VERMONT

HUNTING

Notice was published in the FEDERAL REGISTER on September 16, 1958 (23 F. R. 7135), that pursuant to the authority contained in section 10 of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1224; 16 U. S. C. 7151), and under authority delegated by Commissioner's Order 4 (22 F. R. 8126), it was proposed to adopt the regulation set forth below adding Subpart—Missisquoi

National Wildlife Refuge, Vermont, and § 35.51 to Part 35—Northeastern Region. Interested persons were invited to submit in writing any comments, suggestions, or objections relating to the proposed regulation within 30 days of the date of publication of the notice in the FEDERAL REGISTER. No comments, suggestions, or objections were submitted within the 30-day period.

The regulation is hereby adopted with minor modifications relating to the use of boats as set forth below.

§ 35.51 *Hunting of migratory game birds permitted.* Subject to compliance with the provisions of Parts 6, 18, and 21 of this chapter, the hunting of migratory game birds is permitted on the herein-after described lands of the Missisquoi National Wildlife Refuge, Vermont, subject to the following conditions, restrictions, and requirements:

(a) *Hunting area.* The following described area is open to hunting: A peripheral strip of land varying in width from approximately 50 yards to 200 yards bordering on Gander Bay, Goose Bay, and Missisquoi Bay of Lake Champlain

and between the low water mark thereof and the timber line extending from the northwest boundary of Shad Island east and south to the southeast corner of Goose Bay, except the part of the marsh bordering Goose Bay west of the line of the dike now under construction.

(b) *State laws.* Strict compliance with all State laws and regulations is required.

(c) *Dogs.* Hunting dogs, not to exceed two per hunter, may be used for the purpose of retrieving dead or wounded birds, but such dogs shall not be permitted to run at large on the public shooting grounds or elsewhere on the refuge.

(d) *Use of boats permitted.* Subject to compliance with the provisions of Part 6 of this chapter, the use of boats for the purpose of hunting is permitted.

(Sec. 10, 45 Stat. 1224; 16 U. S. C. 7151)

Dated: October 20, 1958.

D. H. JANZEN,
Director, Bureau of Sport
Fisheries and Wildlife.

[F. R. Doc. 58-8799; Filed, Oct. 23, 1958;
8:48 a. m.]

PROPOSED RULE MAKING

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 324]

[No. 32464]

UNIFORM SYSTEM OF ACCOUNTS FOR CARRIERS BY INLAND AND COASTAL WATERWAYS

NOTICE OF PROPOSED RULE MAKING

OCTOBER 15, 1958.

This rule making proceeding was instituted pursuant to a notice dated July 18, 1958, published in the FEDERAL REGISTER on July 29, 1958 (23 F. R. 5696), according to the terms of which notice, as subsequently modified by a notice dated August 6, 1958 (23 F. R. 6308), written views or suggestions could be filed with the Commission's Secretary on or before September 30, 1958.

Upon consideration of views and suggestions which were timely received from interested persons the proposed rule published as above is withdrawn. Modification of the Uniform System of Accounts for Carriers by Inland and Coastal Waterways is now under consideration as to those features which are listed below. These revised modifications are more particularly explained in the attachments to this notice:

(1) Provide for inclusion under current assets of the following items:

Spare parts, except major units acquired as stand-by equipment, which are to be included in appropriate property accounts.
Inventory of fuel oil aboard vessels.
Prepayments.
Working advances.

(2) Provide for inclusion under current liabilities of the portion of long-term debt due within one year.

(3) Change the titles of accounts for unearned surplus to read capital surplus; also the titles of accounts for earned surplus to read retained income.

(4) Cancel Account 412, Depreciation Adjustment, and provide that the proceeds realized from sale of property or from insurance in excess of or less than net book value of property shall be included in net income or directly in retained income, if the sale is unusual and would materially distort current income.

(5) Provide that Federal income tax consequences (debts and credits), attributable to items of taxable income or deductions from taxable income recorded directly in retained income account, shall be included in new account 288, Federal Income Taxes Assigned to Retained Income.

(6) Provide for transferring amortization reserve for defense projects to the depreciation reserve.

(7) Provide that delayed items and adjustments, other than ordinary adjustments of a recurring nature, shall be included directly in retained income (surplus).

(8) Provide that water-line tax accruals (other than income taxes) shall be classified under operating expenses.

(9) Provide for combining in appropriate expense accounts charges covering both (a) insurance premiums and (b) expenses borne by carriers under the deductible provisions of policies or otherwise not collectible.

(10) Provide for inclusion in charter rent account rental payable for charter of vessels from all sources and not only from "other carriers."

Any interested person may on or before November 17, 1958 file with the Commission's Secretary written views or sug-

gestions to be considered in this rule making proceeding as hereinabove revised, and may request oral argument thereon. After consideration of responses so received and giving effect to such further changes as may be found necessary because of them, the modifications will be ordered pursuant to provisions of Part III of the Interstate Commerce Act (54 Stat. 933 as amended; 49 U. S. C. 904; to interpret or apply 54 Stat. 944 as amended; 49 U. S. C. 913).

[SEAL]

HAROLD D. MCCOY,
Secretary.

1. Current and other assets:

In § 324.1-113 *Material and supplies* change the account number to read § 324.1-115 without changing the title and cancel paragraph (a) of the text, substituting the following provisions in lieu thereof:

(a) This account shall include the cost, less cash and other discounts, of all unissued and unapplied material and supplies, articles in process of manufacture by the carrier, fuel, tools, stationery, commissary and other supplies including fuel on board vessels. This account also shall include the cost of spare parts, except major units of the nature described in the General Instructions § 324.11 (h), which are to be included in appropriate property accounts.

In § 324.1-114 *Other current assets* change the section number to read § 324.1-116 without change in the title or text.

In § 324.1-157 *Spare parts* cancel the number, title, and text of the account.

In § 324.1-172 *Prepayments* change the section number to read § 324.1-114 without change in title or text.

In § 324.1-173 *Working advances* change the section number to read § 324.1-113 without change in title or text.

In § 324.11 *Depreciation accounting* add the following new subparagraph (3) to paragraph (h) of the text:

(3) Accounting units of property shall include major units acquired as stand-by equipment such as a complete propulsion engine, boiler, propulsion motor, generator, etc. The carrier may include the cost of these units as part of the book cost of the operating unit or units of floating equipment to which they apply or as a separate depreciable accounting unit.

2. Long-term debt due within one year:

In § 324.1-207 *Matured long-term obligations* cancel the title, text and note of this account, substituting the following title and text:

§ 324.1-207 *Current maturity of long-term debt.* This account shall include the total amount of all funded obligations (except amounts due affiliated companies which shall be included in Account 213) which are past due or which will mature within one year from the close of the accounting period and for which arrangements have not been entered into for an extension of time as to payment. This includes the portion of long-term debt maturing serially or payable in installments within one year.

In § 324.1-211 *Funded debt unamortized* paragraph (b) (1), *Equipment obligations*, eliminate from the text the comma and the clause reading "including those maturing serially or payable in installments."

3. Retained income and capital surplus:

In § 324.1-250 *Unearned surplus* change the title of this account to read, "Capital surplus."

In § 324.1-250-2 *Other unearned surplus* change the number and title of this sub-account to read: "§ 324.1-250-3 *Other Capital surplus.*"

In § 324.1-250-1 *Paid in surplus* change the number to read § 324.1-250-2 without change in title or text.

In § 324.1-242 *Premiums and assessments on capital stock* change the number to read § 324.1-250-1 without change in title or text.

In § 324.1-260 *Earned surplus; appropriated* change the title of this account to read, "Retained income; appropriated."

In § 324.1-280 *Earned surplus; unappropriated* change the title of this account to read, "Retained income; unappropriated."

4. Sale of property or insurance recovered:

In § 324.7-412 *Depreciation adjustment* cancel the number, title and text of this account.

In § 324.5-531 *Miscellaneous amortization charges to income*, and § 324.5-533 *Miscellaneous reservations of income* cancel the titles and texts of these accounts.

Add the following new and additional accounts:

§ 324.4-508 *Profit from sale or disposition of property.* This account shall include profits realized from the sale or other disposition of carrier or non-carrier property. The amount includible in this account is the net proceeds or salvage realized or recovered in excess of the net book value (book cost less recorded depreciation). The account also shall include insurance proceeds in excess of net book value.

§ 324.5-534 *Loss from sale or disposition of property.* This account shall include losses sustained from the sale or other disposition of carrier or non-carrier property. The amount includible in this account is the deficiency between the net proceeds, insurance, or salvage realized or recovered and the net book value (book cost less recorded depreciation).

In § 324.3-282 *Credits from transportation property retired* cancel the title and text of this account and substitute the following in lieu thereof:

§ 324.3-282 *Profit from sale of property.* This account shall include profits (excess of net proceeds over book cost less recorded depreciation) realized from unusual sales of carrier and non-carrier property when such profits are so material in amount that their inclusion in the income statement would impair the significance of net income for the year so that misleading inferences might be drawn therefrom. Ordinary profits or credit adjustments of a recurring nature incident to sale or other disposition of equipment or other property shall be included in income account 508, *Profit From Sale or Disposition of Property.*

Add to the group of Debit Accounts, the following new account and text:

§ 324.3-284 *Loss from sale of property.* This account shall include losses (deficiency between net proceeds and book cost less recorded depreciation) from unusual sales of carrier and non-carrier property when such losses are so material in amount that their inclusion in the income statement would impair the significance of net income for the year so that misleading inferences might be drawn therefrom. Ordinary losses or debit adjustments of a recurring nature incident to sale or other disposition of equipment or other property shall be included in income account 534, *Loss From Sale or Disposition of Property.*

5. Income taxes attributable to amounts recorded in retained income: Add the following new and additional account:

§ 324.3-288 *Federal income taxes assigned to retained income.* This account shall include the estimated Federal income tax consequences (debit or credit) assignable to profits and losses from sale of property and other amounts when, for accounting purposes, such amounts are recorded directly in retained income accounts.

In § 324.5-532 *Income taxes* cancel the text of the account and substitute the following in lieu thereof:

§ 324.5-532 *Income taxes.* This account shall include accruals for Federal and State income taxes, when not in lieu of a property tax, payable on amounts includible in the carrier's income accounts.

NOTE: Federal income tax charges or credits attributable to items of taxable income or deductions from taxable income, recorded directly in retained income accounts, shall be included in Account 288, *Federal Income Taxes Assigned to Retained Income.*

6. Amortization reserve; defense projects:

In § 324.1-149 *Depreciation reserve; transportation property* add the following new sentence in paragraph (a) of the text: "This account shall be subdivided so as to show separately:

(1) Depreciation reserve—transportation property.

(2) Past provision for amortization of defense projects."

In § 324.1-150 *Amortization reserve; defense projects* cancel the number, title, and text of the account.

7. Delayed items:

In § 324.4 *Delayed items and adjustments* eliminate the second sentence and substitute the following sentence in lieu thereof: "When the amount of a delayed item, which is not an ordinary adjustment of a recurring nature, is relatively so large that its inclusion in income for the current year would seriously distort such income, the amount of the item shall be included in accounts 283, 'Miscellaneous credits,' or 285 'Miscellaneous debits,' as appropriate."

In § 324.3-283 *Miscellaneous credits* add the following new item to the list of items in the text:

10. Delayed items and credit adjustments, other than ordinary adjustments of a recurring nature, including material adjustments of Federal income taxes. (See § 324.4 *Delayed items and adjustments.*)

In § 324.3-285 *Miscellaneous debits* add the following new item to the list of items in the text:

12. Delayed items and debit adjustments, other than ordinary adjustments of a recurring nature, including material adjustments of Federal income taxes. (See § 324.4 *Delayed items and adjustments.*)

In § 324.4-508 *Delayed income credits* and § 324.5-534 *Delayed income debits*, cancel the numbers, titles, texts, and notes of the two accounts.

8. Water-line tax accruals:

In § 324.5-521 *Water-line tax accruals* cancel the number only and retain the section, title, and notes without change, substituting § 324.7-486 in lieu of § 324.5-521.

9. Casualties and insurance expenses and deductibles:

a. In the Casualties group of expenses, comprising accounts § 324.7-451 *Supervision*; § 324.7-452 *Loss and damage-freight*; § 324.7-453 *Loss and damage-baggage*; § 324.7-454 *Damage to property*; and § 324.7-455 *Injury to persons*, and, in the Insurance group of expenses, comprising accounts § 324.7-471 *Hull and disbursement insurance*; § 324.7-472 *Cargo insurance*; § 324.7-473 *Protection and indemnity insurance*; and § 324.7-474 *Other insurance*, cancel the numbers,

titles, texts and notes of these accounts and substitute the following in lieu thereof:

CASUALTIES AND INSURANCE

§ 324.7-471 *Supervision.* This account shall include the pay, traveling and other expenses of the departmental heads and their employees in charge of or engaged in the supervision, adjustment, investigation and settlement of claims for loss and damage to property and cargo, liability, etc. as defined in the insurance group of accounts.

NOTE: Legal expenses of conducting suits or settling claims arising in connection with insurance coverage shall be charged to the appropriate insurance accounts.

§ 324.7-472 *Baggage insurance and losses.* (a) This account shall include insurance premiums paid to insure against amounts payable for loss, damage, delays, or destruction of baggage and other personal property as well as amounts payable when not recoverable through insurance or from other carriers; also pay and expenses of adjusters of baggage claims or while engaged as witnesses in lawsuits.

(b) This account shall be credited with the net amount received from the sale of unclaimed or damaged baggage.

§ 324.7-473 *Hull insurance and damage.* (a) This account shall include the cost of insurance to protect the carrier against loss or damage sustained in the operation of floating equipment in line service or terminal service due to marine accidents, perils of the sea, fire and other losses covered by usual hull insurance policies.

(b) This account also shall include the cost of repairs to floating equipment arising from such causes borne by the carrier under the deductible provisions of insurance policies or otherwise not collectible from underwriters or others. The account may be charged each month with an amount estimated to be sufficient to meet the probable liability for deductibles or the carrier's proportion of self-carried risks with concurrent credit to account 221, Insurance Reserves, and this latter account shall be charged when the liability is determined. Amounts recovered from underwriters or others less expenses in connection with such recovery shall be credited to this account or to account 221, Insurance Reserves, as appropriate.

§ 324.7-474 *Cargo insurance, loss and damage.* (a) This account shall include the cost of insurance to protect the carrier against loss and damage to cargo.

(b) This account also shall include amounts payable for loss, damage, delay, or destruction of freight shipments not recoverable through insurance or from other carriers. The account shall include uncollectible freight charges payable on lost, damaged, or refused shipments, and costs of repacking and boxing damaged freight. The account may be charged monthly with an amount estimated to be sufficient to meet the probable liability for freight claims with concurrent credit to account 221, Insurance Reserves, and this latter account shall be cleared when liability is de-

termined. Amounts receivable from the sale of refused, unclaimed and damaged freight shall be credited to this account or to account 221, Insurance Reserves, as appropriate.

§ 324.7-475 *Liability insurance and losses, marine operations.* (a) This account shall include the cost of insurance to protect the carrier against losses resulting from injury and illness of crew and passengers on its vessels, crew repatriation, damage to property of others caused by carrier's vessels, and other losses covered by protection and indemnity or other marine liability insurance policies, as well as penalties imposed by governmental authorities.

(b) This account shall also include (1) amounts payable by the carrier for damage to or destruction of property owned by others, but excepting freight and baggage entrusted to the company for transportation, and (2) payments and expenses connected with injuries or death of persons and employees which occur in connection with marine operations in performing transportation service when such payments and expenses are borne by the carrier under the deductible provisions of insurance policies or not otherwise collectible from underwriters or others. The account may be charged each month with an amount estimated to be sufficient to meet probable liability for personal injuries and property damage claims arising from marine operations with concurrent credit to account 221, Insurance Reserves, and this latter account shall be cleared when liability is determined.

§ 324.7-476 *Liability insurance and losses, non-marine operations.* (a) This account shall include the cost of insurance to protect the carrier against liability for claims of employees who are employed on shore such as stevedores, shop employees, fleet employees, general and branch office employees ordinarily covered by workmen's compensation insurance, and cost of insurance to protect the carrier against claims arising from public liability in connection with shore operations.

(b) This account also shall include (1) amounts payable by the carrier for damage, arising from shore operations, to or destruction of property owned by others, but excepting freight or baggage entrusted to the company for transportation, and (2) payments and expenses connected with injuries or death of persons and employees which occur in connection with shore operations where such payments and expenses are borne by the carrier under the deductible provisions of insurance policies or otherwise not collectible from underwriters or others. The account may be charged each month with an amount estimated to be sufficient to meet the probable liability for personal injury and property damage claims arising from shore operations with concurrent credit to account 221, Insurance Reserves, and this latter account shall be cleared when liability is determined.

(c) This account shall include expenses of consultants, witnesses in connection with personal injury claims, payments to hospitals and payments to phy-

sicians, surgeons, and nurses attending injured shore employees or other persons injured in shore operations.

§ 324.7-477 *Other insurance.* This account shall include the cost of insurance not provided for elsewhere, to protect the carrier against loss and damage as well as deductibles when included in the policies of insurance. Such cost would include fire, theft, auto liability, general excess liability, fidelity, etc., and insurance premiums on automobiles, trucks, buildings, fixtures and machinery.

b. In the primary groups of operating expenses, Pages 41 and 42, cancel primary groups IV, Casualties, and VII, Insurance, and provide for combining casualty and insurance expenses in appropriate primary accounts in a new grouping, and, renumber the primary groups of accounts beginning with primary grouping IV:

- IV. Traffic Expenses.
- V. General Expenses.
- VI. Casualties and Insurance.
- VII. Operating Rents.
- VIII. Operating Taxes.
- IX. Motor Carrier Operations.

c. In § 324.7-402 *Repairs of floating equipment* and § 324.7-404 *Repairs of buildings and other structures* delete that portion of the instructions in the texts and notes of these accounts relating to the charging of the cost of repairs, not recoverable from insurance, to these accounts and substitute the new provisions adopted which provide for charging of such costs to the appropriate insurance accounts.

d. In § 324.1-229 *Other reserves* cancel the text of this account and substitute the following in lieu thereof:

§ 324.1-229 *Other reserves.* This account shall include the net credit balances representing reserves created by accruals to the appropriate accounts in operating expenses to meet the unusual probable liabilities not covered by other reserves. When the liability is determined, this account shall be cleared and amount payable credited to the appropriate liability account.

e. In § 324.1-221 *Insurance reserves* add the following to the Note: "The records supporting the entries in this account shall be kept to show separately the transactions with respect to Hull, Cargo and Liability self-carried insurance or deductible costs."

10. Charter rental for transportation property:

In § 324.7-481 *Charter rents* cancel the title and text of this account and substitute the following in lieu thereof:

§ 324.7-481 *Charter rents; transportation property.* (a) This account shall include the rent payable by the carrier under contract for the charter of vessels (when the amount payable as charter rent is not dependent upon the commodities and volume of freight transported), such as bare boat or time charters.

(b) The carrier shall include the rent payable under the contract in this account, and shall include in other appropriate operating expense accounts

additional expenses incurred by it in operating vessels chartered from others.

11. Other changes: Before an order is entered pursuant to this notice of proposed rule making, all references and instructions elsewhere in this system of accounts will be modified or corrected in conformity with the foregoing, and such modifications or corrections will be detailed in the order.

[F. R. Doc. 58-6817; Filed, Oct. 23, 1958; 8:51 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 51]

UNITED STATES STANDARDS FOR SHELLLED WALNUTS (*JUGLANS REGIA*)¹

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that the United States Department of Agriculture is considering the revision of United States Standards for Shelled English Walnuts (*Juglans regia*) (§§ 51.2275 to 51.2296) pursuant to the authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087 et seq., as amended; 7 U. S. C. 1621 et seq.).

All persons who desire to submit written data, views or arguments for consideration in connection with the proposed standards should file the same with the Chief, Fresh Products Standardization and Inspection Branch, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, South Building, Washington 25, D. C., not later than 15 days after publication hereof in the FEDERAL REGISTER.

The proposed standards are as follows:

GENERAL

- Sec.
51.2275 Application.
51.2276 Color chart.

GRADES

- 51.2277 U. S. No. 1.
51.2278 U. S. Commercial.

UNCLASSIFIED

- Sec.
51.2279 Unclassified.

TOLERANCES FOR GRADE DEFECTS

- 51.2280 Tolerances for grade defects.

COLOR REQUIREMENTS

- 51.2281 Color classifications.
51.2282 Tolerances for color.
51.2283 Off color.

SIZE REQUIREMENTS

- 51.2284 Size classifications.
51.2285 Tolerances for size.
APPLICATION OF TOLERANCES
51.2286 Application of tolerances.

DEFINITIONS

- 51.2287 Well dried
51.2288 Clean.
51.2289 Shell.
51.2290 Insect injury.
51.2291 Rancidity.
51.2292 Damage.
51.2293 Serious damage.

- Sec.
51.2294 Very serious damage.
51.2295 Half kernel.
51.2296 Three-fourths half kernel.

AUTHORITY: §§ 51.2275 to 51.2296 issued under sec. 205, 60 Stat. 1090, Pub. Law 156, 83d Cong.; 7 U. S. C. 1624.

GENERAL

§ 51.2275 *Application.* The standards contained in this subpart apply only to walnuts commonly known as English or Persian walnuts (*Juglans regia*). They do not apply to walnuts commonly known as black walnuts (*Juglans nigra*).

§ 51.2276 *Color chart.* The walnut color chart¹ to which reference is made in §§ 51.2281 and 51.2282 has been prepared by the United States Department of Agriculture as a part of these standards.

GRADES

§ 51.2277 *U. S. No. 1.* "U. S. No. 1" consists of portions of walnut kernels which are well dried, clean, free from shell, foreign material, insect injury, decay, rancidity, and free from damage caused by shriveling, mold, discoloration of the meat or other means. (See § 51.2280.)

(a) Color shall be specified in connection with this grade in terms of one of the color classifications. (See §§ 51.2276, 51.2281 and 51.2282.)

(b) Size shall be specified in connection with this grade in terms of one of the size classifications. (See §§ 51.2284 and 51.2285.)

§ 51.2278 *U. S. Commercial.* "U. S. Commercial" consists of portions of walnut kernels which meet the requirements of U. S. No. 1 grade, except for increased tolerances. (See § 51.2280.)

(a) Color of walnuts in this grade shall be not darker than "amber" classification, and color need not be specified. However, color may be specified in connection with the grade in terms of one of the color classifications. (See §§ 51.2276, 51.2281 and 51.2282.)

(b) Size shall be specified in connection with this grade in terms of one of the size classifications. (See §§ 51.2284 and 51.2285.)

UNCLASSIFIED

§ 51.2279 *Unclassified.* "Unclassified" consists of portions of walnut kernels which have not been classified in accordance with either of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards, but is provided as a designation to show that no grade has been applied to the lot.

TOLERANCES FOR GRADE DEFECTS

§ 51.2280 *Tolerances for grade defects.* (a) All percentages shall be calculated on the basis of weight.

(b) In order to allow for variations, other than for color and size, incident to proper grading and handling, tolerances shall be permitted for the respective grades as indicated in Table I:

TABLE I

Grade	Tolerances for grade defects			
	Total defects	Serious damage	Very serious damage	Shell and foreign material
U. S. No. 1.....	Percent 5	Percent 2 (Included in 5 percent total defects).	Percent 1 (Included in 2 percent serious damage).	Percent 0.05 (Included in 1 percent very serious damage).
U. S. Commercial.....	8	4 (Included in 8 percent total defects).	2 (Included in 4 percent serious damage).	0.05 (Included in 2 percent very serious damage).

COLOR REQUIREMENTS

§ 51.2281 *Color classifications.* The following classifications are provided to describe the color of any lot: "Extra Light", "Light", "Light Amber" or "Amber". The portions of kernels in the lot shall not be darker than the darkest color permitted in the specified classification as shown on the color chart.

§ 51.2282 *Tolerances for color.* (a) All percentages shall be calculated on the basis of weight.

(b) In order to allow for variations incident to proper grading and handling, tolerances shall be permitted for the respective color classifications as indicated in Table II:

TABLE II

Color classification	Tolerances for color			
	Darker than extra light ¹	Darker than light ¹	Darker than light amber ¹	Darker than amber ¹
Extra light.....	15 percent.....	2 percent (Included in 15 percent darker than extra light).		
Light.....		15 percent.....	2 percent (Included in 15 percent darker than light).	
Light amber.....			15 percent.....	2 percent (Included in 15 percent darker than light amber).
Amber.....				10 percent.

¹ See illustration of this term on color chart.

² The walnut color chart has been filed with the original document and is available for inspection in the Division of the Federal Register or in the Fruit and Vegetable Division, United States Department of Agriculture, South Building, Washington 25, D. C. A printed copy of this color chart is attached to each copy of these standards issued by the United States Department of Agriculture.

¹ Packing of the product in conformity with the requirements of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

§ 51.2283 *Off color.* The term "off color" is not a color classification, but shall be applied to any lot which fails to meet the requirements of the "Amber" classification.

SIZE REQUIREMENTS

§ 51.2284 *Size classification.* The following classifications are provided to describe the size of any lot: "Halves", "Pieces and Halves", "Pieces" or "Small Pieces". The size of portions of kernels in the lot shall conform to the requirements of the specified classification as defined below:

(a) *Halves.* Lot consists of 85 percent or more, by weight, half kernels, and the remainder three-fourths half kernels. (See § 51.2285.)

(b) *Pieces and halves.* Lot consists of 20 percent or more, by weight, half kernels, and the remainder portions of kernels that cannot pass through a sieve

with $\frac{3}{16}$ inch round openings. When a lot exceeds this minimum requirement, the actual percentage of halves may be specified. (See § 51.2285.)

(c) *Pieces.* Lot consists of portions of kernels that cannot pass through a sieve with $\frac{3}{16}$ inch round openings. (See § 51.2285.)

(d) *Small pieces.* Lot consists of portions of kernels that pass through a sieve with $\frac{3}{16}$ inch round openings, but that cannot pass through a sieve with $\frac{5}{16}$ inch round openings. When desired, the actual size ranges within such size ranges may be specified. (See § 51.2285.)

§ 51.2285 *Tolerances for size.* (a) All percentages shall be calculated on the basis of weight.

(b) In order to allow for variations incident to proper sizing and handling, tolerances shall be permitted for the respective size classifications as indicated in Table III:

TABLE III

Size classification	Tolerances for size				
	Smaller than three-fourths halves	Will not pass through $\frac{3}{16}$ inch round hole	Pass through $\frac{3}{16}$ inch round hole	Pass through $\frac{5}{16}$ inch round hole	Pass through $\frac{9}{16}$ inch round hole
	Percent	Percent	Percent	Percent	Percent
Halves	5			1 (included in 5 percent)	1 (included in 5 percent)
Pieces and halves ¹			18	3 (included in 18 percent)	3 percent
Pieces			25	5 (included in 25 percent)	1 (included in 5 percent)
Small pieces ²		10			2

¹ No part of any tolerance shall be used to reduce the percentage of halves required or specified in a lot of "pieces and halves".

² The tolerances of 10 percent and 2 percent for "small pieces" classification shall apply, respectively, to any smaller maximum or any larger minimum sizes specified.

APPLICATION OF TOLERANCES

§ 51.2286 *Application of tolerances.* The tolerances provided in these standards are on a lot basis, and they shall be applied to a composite sample representative of the lot. However, any container or group of containers in which the walnuts are obviously of a quality materially different from that in the majority of containers shall be considered a separate lot, and shall be sampled separately.

DEFINITIONS

§ 51.2287 *Well dried.* "Well dried" means that the portion of kernel is firm and crisp, not pliable or leathery.

§ 51.2288 *Clean.* "Clean" means that the appearance of the individual portion of kernel, or of the lot as a whole, is not materially affected by adhering dust, dirt or other foreign material.

§ 51.2289 *Shell.* "Shell" means the outer shell and/or the woody partition from between the halves of the kernel, and any fragments of either.

§ 51.2290 *Insect injury.* "Insect injury" means that the insect, web, frass or other evidence of insects is present on the portion of kernel.

§ 51.2291 *Rancidity.* "Rancidity" means that the portion of kernel is noticeably rancid to the taste. Rancidity should not be confused with a slightly astringent flavor of the pellicle (skin) or with staleness (the stage at which the flavor is flat but not objectionable).

§ 51.2292 *Damage.* "Damage" means any defect, other than color, which materially affects the appearance, or the edible or shipping quality of the individual portion of kernel, or of the lot as a whole. Any one of the following defects or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect shall be considered as damage:

(a) Shriveling when more than one-eighth of the portion of kernel is severely shriveled, or a greater area is affected by lesser degrees of shriveling producing an equally objectionable appearance, except that kernels which are thin in cross-section but which are otherwise normally developed shall not be considered as damaged;

(b) Mold when plainly visible;

(c) Discoloration of the meat when more than one-eighth the volume of the portion of kernel is severely discolored, or a greater volume is affected by lesser degrees of discoloration producing an equally objectionable appearance;

(d) Not well dried; and,

(e) Not clean.

§ 51.2293 *Serious damage.* "Serious damage" means any defect, other than color, which seriously affects the appearance, or the edible or shipping quality of the individual portion of kernel or of the lot as a whole. Any one of the following defects or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect shall be considered as serious damage:

(a) Shriveling when more than one-fourth of the kernel is severely shriveled, or a greater area is affected by lesser degrees of shriveling producing an equally objectionable appearance;

(b) Mold when plainly visible on more than one-eighth of the surface of the kernel in the aggregate; and,

(c) Discoloration of the meat when more than one-fourth the volume of the portion of kernel is severely discolored, or a greater volume is affected by lesser degrees of discoloration producing an equally objectionable appearance.

§ 51.2294 *Very serious damage.* "Very serious damage" means any defect, other than color, which very seriously affects the appearance, or the edible or shipping quality of the individual portion of kernel or of the lot as a whole. Any one of the following defects or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect shall be considered as very serious damage:

(a) Shriveling when more than 50 percent of the portion of kernel is severely shriveled;

(b) Mold when plainly visible on more than one-fourth of the surface of the portion of kernel in the aggregate;

(c) Discoloration of the meat when more than one-half the volume of the portion of kernel is severely discolored;

(d) Insect injury;

(e) Rancidity or decay; and,

(f) Shell, or any foreign material.

§ 51.2295 *Half kernel.* "Half kernel" means the separated half of a kernel with not more than one-eighth broken off.

§ 51.2296 *Three-fourths half kernel.* "Three-fourths half kernel" means a portion of a half of a kernel which has more than one-eighth but not more than one-fourth broken off.

Dated: October 21, 1958.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator,
Marketing Services.

[F. R. Doc. 58-8942; Filed, Oct. 23, 1958;
8:57 a.m.]

[7 CFR Part 51]

UNITED STATES STANDARDS FOR WALNUTS (JUGLANS REGIA) IN THE SHELL¹

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that the United States Department of Agriculture is considering the revision of United States Standards for Walnuts (*Juglans regia*) in the Shell (§§ 51.2945 to 51.2967) pursuant to the authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087 et seq., as amended; 7 U. S. C. 1621 et seq.).

All persons who desire to submit written data, views or arguments for consideration in connection with the pro-

¹ Packing of the product in conformity with the requirements of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

posed standards should file the same with the Chief, Fresh Products Standardization and Inspection Branch, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, South Building, Washington 25, D. C., not later than 15 days after publication hereof in the FEDERAL REGISTER.

The proposed standards are as follows:

GENERAL	
Sec.	
51.2945	Application.
51.2946	Color chart.
51.2947	Method of inspection.
GRADES	
51.2948	U. S. No. 1.
51.2949	U. S. No. 2.
51.2950	U. S. No. 3.
UNCLASSIFIED	
51.2951	Unclassified.
SIZE SPECIFICATIONS	
51.2952	Size specifications.
VARIETY OF TYPE SPECIFICATIONS	
51.2953	Variety or type specifications.
TOLERANCES FOR GRADE DEFECTS	
51.2954	Tolerances for grade defects.
APPLICATION OF TOLERANCES	
51.2955	Application of tolerances.
DEFINITIONS	
51.2956	Practically clean.
51.2957	Bright.
51.2958	Fairly uniform color.
51.2959	Splits.
51.2960	Injury by discoloration.
51.2961	Damage.
51.2962	Well dried.
51.2963	Dark discoloration.
51.2964	Rancidity.
51.2965	Fairly clean.
51.2966	Serious damage.
51.2967	Very serious damage by shriveling.

AUTHORITY: §§ 51.2945 to 51.2967 issued under sec 205, 60 Stat. 1090, as amended; 7 U. S. C. 1624.

GENERAL

§ 51.2945 *Application.* The standards contained in this subpart apply only to walnuts commonly known as English or Persian walnuts (*Juglans regia*). They do not apply to walnuts commonly known as black walnuts (*Juglans nigra*).

§ 51.2946 *Color chart.* The walnut color chart* to which reference is made in §§ 51.2948, 51.2949 and 51.2950 has been prepared by the United States Department of Agriculture as a part of this subpart.

§ 51.2947 *Method of inspection.* In determining the grade of a lot of walnuts, all of the nuts in the sample first should be graded for size and then examined for external defects. The same nuts then should be cracked and examined for internal defects. The nuts must

*The walnut color chart has been filed with the original document and is available for inspection in the Division of the Federal Register or in the Fruit and Vegetable Division, United States Department of Agriculture, South Building, Washington 25, D. C. A printed copy of this color chart is attached to each copy of these standards issued by the United States Department of Agriculture.

meet the requirements for both external and internal quality in order to meet a designated grade.

GRADES

§ 51.2948 *U. S. No. 1.* "U. S. No. 1" consists of walnuts, the shells of which are dry, practically clean, bright, fairly uniform in color, and free from splits, injury by discoloration and free from damage caused by broken shells, perforated shells, adhering hulls or other means. The kernels shall be well dried, free from decay, dark discoloration, rancidity, insects or any insect injury, and free from damage caused by mold, shriveling or other means. (See § 51.2954.)

(a) This grade shall contain at least 50 percent, by count, of walnuts having kernels which are not darker in color than "light" (see color chart), and which are free from defects of U. S. No. 1 grade. Higher percentages of nuts with kernels not darker than "light", which are free from defects of U. S. No. 1 grade, may be specified in accordance with the facts. (See § 51.2954.)

(b) Size shall be specified in connection with the grade. (See § 51.2952.)

§ 51.2949 *U. S. No. 2.* "U. S. No. 2" consists of walnuts, the shells of which are dry, practically clean, free from splits, and free from damage caused by broken shells, perforated shells, adhering hulls, discoloration or other means. The kernels shall be well dried, free from decay, dark discoloration, rancidity, insects or any insect injury, and free from damage caused by mold, shriveling or other means. (See § 51.2954.)

(a) This grade shall contain at least 30 percent, by count, of walnuts having kernels which are not darker in color than "light" (see color chart), and which are free from defects of U. S. No. 2 grade. Higher percentages of nuts with kernels not darker in color than "light", which are free from defects of U. S. No. 2 grade, may be specified in accordance with the facts. (See § 51.2954.)

(b) Size shall be specified in connection with the grade. (See § 51.2952.)

§ 51.2950 *U. S. No. 3.* "U. S. No. 3" consists of walnuts, the shells of which are dry, fairly clean, free from splits and free from damage caused by broken shells, and free from serious damage caused by discoloration, perforated shells, adhering hulls or other means. The kernels shall be well dried, free from decay, dark discoloration, rancidity, insects or any insect injury, and free from damage caused by mold, shriveling or other means. (See § 51.2954.)

(a) There shall be no requirements in this grade for the percentage of walnuts having kernels which are "light" in color. However, the percentage of walnuts in any lot having kernels which are not darker than "light" (see color chart), and which are free from defects of U. S. No. 3 grade, may be specified in accordance with the facts. (See § 51.2954.)

(b) Size shall be specified in connection with the grade. (See § 51.2952.)

UNCLASSIFIED

§ 51.2951 *Unclassified.* "Unclassified" consists of walnuts in the shell which

have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot.

SIZE SPECIFICATIONS

§ 51.2952 *Size specifications.* Size shall be specified in accordance with the facts in terms of one of the following classifications:

(a) *Mammoth size.* Mammoth size means walnuts of which not over 12 percent, by count, pass through a round opening $\frac{9}{16}$ inches in diameter;

(b) *Jumbo size.* Jumbo size means walnuts of which not over 12 percent, by count, pass through a round opening $\frac{8}{16}$ inches in diameter;

(c) *Large size.* Large size means walnuts of which not over 12 percent, by count, pass through a round opening $\frac{7}{16}$ inches in diameter; except that for walnuts of the Eureka variety and type, such limiting dimension as to diameter shall be $\frac{7}{16}$ inches;

(d) *Medium size.* Medium size means walnuts of which at least 88 percent, by count, pass through a round opening $\frac{7}{16}$ inches in diameter, and of which not over 12 percent, by count, pass through a round opening $\frac{7}{16}$ inches in diameter;

(e) *Standard size.* Standard size means walnuts of which not over 12 percent, by count, pass through a round opening $\frac{7}{16}$ inches in diameter;

(f) *Baby size.* Baby size means walnuts of which at least 88 percent, by count, pass through a round opening $\frac{7}{16}$ inches in diameter, and of which not over 10 percent, by count, pass through a round opening $\frac{6}{16}$ inch in diameter; and,

(g) *Minimum diameter, or minimum and maximum diameter.* In lieu of one of the foregoing classifications, size of walnuts may be specified in terms of minimum diameter or minimum and maximum diameter: *Provided*, That not more than 12 percent, by count, pass through a round hole of the specified minimum diameter, and at least 88 percent, by count, pass through a round hole of any specified maximum diameter.

VARIETY OR TYPE SPECIFICATIONS

§ 51.2953 *Variety or type specifications.* The variety or type of any lot of walnuts in the shell may be specified in accordance with the facts as follows:

(a) If the lot is of one named variety, that variety name may be specified, or if the lot is of the Placentia Perfection variety and/or like types, it may be specified as "Budded": *Provided*, That not over 10 percent, by count, of the walnuts in the lot are of another variety or type than that specified; and,

(b) If the lot is a mixture of two or more distinct varieties or types or consists of seedlings, it may be specified as "Soft Shells" or "Mixed Varieties".

TOLERANCES FOR GRADE DEFECTS

§ 51.2954 *Tolerances for grade defects.* In order to allow for variations incident to proper grading and handling, the following tolerances shall be permitted for the respective grades as indicated. All

percentages shall be determined on the basis of count. Terms in quotation marks refer to color classifications illustrated on the color chart.

Grade	External (shell) defects	Internal (kernel) defects	Color of kernels
U. S. No. 1.....	10 percent for splits. In addition 5 percent total, for defects other than splits, including not over 3 percent serious damage.	10 percent total, including not more than 6 percent serious damage, but not over five-sixths of the latter amount, or 5 percent affected by insects or insect injury.	No tolerance for the required 50 percent or any larger percentage of "light" kernels specified.
U. S. No. 2.....	10 percent for splits. In addition 5 percent for defects other than splits.	20 percent total, including not more than 10 percent serious damage, but not over one-half of this latter amount, or 5 percent, affected by insects or insect injury.	No tolerance for the required 30 percent or any larger percentage of "light" kernels specified.
U. S. No. 3.....	10 percent for splits. In addition 10 percent total, for defects other than splits, including not over 5 percent serious damage by adhering hulls.	30 percent total, including not more than 20 percent serious damage, but not over one-half of the latter amount, or 10 percent, for very serious damage by shriveling or serious damage by causes other than shriveling.	No tolerance for any percentage of "light" kernels specified.

APPLICATION OF TOLERANCES

§ 51.2955 *Application of tolerances.* The tolerances provided in these standards are on a lot basis, and they shall be applied to a composite sample representative of the lot. However, any container or group of containers in which the walnuts are obviously of a quality materially different from that in the majority of containers shall be considered a separate lot, and shall be sampled separately.

DEFINITIONS

§ 51.2956 *Practically clean.* "Practically clean" means that from the viewpoint of general appearance the walnuts are practically free from adhering dirt or other foreign matter and that individual walnuts are not damaged by such means. A slight chalky deposit on the shell is characteristic of many bleached nuts and shall not be considered as dirt or foreign matter.

§ 51.2957 *Bright.* "Bright" means a fairly light, attractive appearance. A slight chalky deposit on the shell shall not be considered as affecting brightness.

§ 51.2958 *Fairly uniform color.* "Fairly uniform color" means that the shell color of individual nuts does not contrast materially with the general color of the lot.

§ 51.2959 *Splits.* "Splits" means walnuts with shell halves separated at the suture but held together by the kernel.

§ 51.2960 *Injury by discoloration.* "Injury by discoloration" means that the color of affected portions of the shell contrasts materially with the color of the rest of the shell of the individual nut.

§ 51.2961 *Damage.* "Damage" means any injury or defect which materially affects the appearance, or the edible or shipping quality of the walnut. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:

(a) Broken shells when any material portion of the shell is missing or the halves are completely broken apart and separated;

(b) Perforated shells when the area affected aggregates more than one-fourth of an inch in diameter. The

term "perforated shells" means imperfectly developed areas on the shell resembling abrasions and usually including small holes penetrating the shell wall;

(c) Adhering hulls when affecting more than 5 percent of the shell surface;

(d) Discoloration (or stain) which covers, in the aggregate, one-fifth or more of the surface of the shell of an individual nut, and which is brown, reddish brown, gray, or other color contrasting with the color of the rest of the shell or the majority of shells in the lot; or darker discoloration covering a smaller area if the appearance is equally objectionable;

(e) Mold which is white or gray, inconspicuous and thinly scattered over more than one-fourth of the surface of the entire kernel; or any white or gray mold which is thick and conspicuous; or any yellow, blue, green or other colored mold; and,

(f) Shriveling when more than 5 percent of the surface of the kernel, including both halves, is severely shriveled; or a greater area is affected by lesser degrees of shriveling producing an equally objectionable appearance. Kernels which are thin in cross section but which are otherwise normally developed, shall not be considered as damaged.

§ 51.2962 *Well dried.* "Well dried" means that the kernel is firm and crisp, not pliable or leathery.

§ 51.2963 *Dark discoloration.* "Dark discoloration" means that the color of the skin of the kernel is darker than "amber". (See color chart.)

§ 51.2964 *Rancidity.* "Rancidity" means the stage of deterioration in which the kernel has developed a rancid flavor. Rancidity should not be confused with a slightly astringent flavor of the pellicle (skin) or with staleness, the stage at which the flavor is flat but not distasteful.

§ 51.2965 *Fairly clean.* "Fairly clean" means that from the viewpoint of

*The walnut color chart has been filed with the original document and is available for inspection in the Division of the Federal Register or in the Fruit and Vegetable Division, United States Department of Agriculture, South Building, Washington 25, D. C. A printed copy of this color chart is attached to each copy of these standards issued by the United States Department of Agriculture.

general appearance the lot is not seriously damaged by adhering dirt or other foreign matter and that individual walnuts are not coated or caked with dirt or foreign matter. Both the amount of surface affected and the color of the dirt shall be taken into consideration.

§ 51.2966 *Serious damage.* "Serious damage" means any injury or defect which seriously affects the appearance, or the edible or shipping quality of the walnut. Decay, rancidity and insects or insect injury shall be considered serious damage. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as serious damage:

(a) Discoloration (or stain) which covers, in the aggregate, one-third or more of the surface of the shell of an individual nut and which is brown, reddish brown, gray, or other color contrasting sharply with the color of the rest of the shell or the majority of shells in the lot; or darker discoloration covering a smaller area if the appearance is equally objectionable;

(b) Perforated shells when the area affected aggregates more than three-eighths of an inch in diameter. The term "perforated shells" means imperfectly developed areas on the shell resembling abrasions and usually including small holes penetrating the shell wall;

(c) Adhering hulls when affecting more than one-eighth of the shell surface in the aggregate;

(d) Mold which is white or gray, thick and conspicuous and covers one-eighth or more of the surface of the entire kernel; or yellow, green, blue or other colored mold which covers 5 percent or more of the surface of the entire kernel; and,

(e) Shriveling when both halves of the kernel are affected by severe shriveling over an area totaling more than one-eighth of the surface; or when both halves are affected over a greater area by lesser degrees of shriveling producing an equally objectionable appearance. When one of the halves of the kernel shows no shriveling, the kernel shall not be considered damaged unless the other half shows shriveling to the extent that over 50 percent of its surface is severely shriveled or a greater area is affected by lesser degrees of shriveling producing an equally objectionable appearance. Kernels which are thin in cross section, but which are otherwise normally developed shall not be considered as damaged.

§ 51.2967 *Very serious damage by shriveling.* "Very serious damage by shriveling" means that more than one-half of the surface of the entire kernel is severely shriveled or that a greater area is affected by lesser degrees of shriveling producing an equally objectionable appearance.

Dated October 21, 1958.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator,
Marketing Services.

[F. R. Doc. 58-9841; Filed, Oct. 23, 1958; 8:57 a. m.]

[7 CFR Part 984]

WALNUTS GROWN IN CALIFORNIA, OREGON,
AND WASHINGTONBUDGET OF EXPENSES FOR WALNUT CONTROL
BOARD AND RATES OF ASSESSMENT FOR
1958-59 MARKETING YEAR

Notice is hereby given that the Secretary is considering establishment of a budget of expenses of the Walnut Control Board, and rates of assessment, as hereinafter set forth, for the marketing year which began August 1, 1958. Such action would be based on recommendations of the Walnut Control Board and other available information in accordance with the applicable provisions of Marketing Agreement No. 105, as amended, and Order No. 84, as amended, regulating the handling of walnuts grown in California, Oregon, and Washington (7 CFR Part 984), effective under the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

Consideration will be given to data, views, or arguments pertaining thereto which are filed with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, U. S. Department of Agriculture, Washington 25, D. C., not later than ten days after publication of this notice in the FEDERAL REGISTER.

Approximately 71 million pounds of unshelled walnuts and 29 million pounds of shelled walnuts are estimated to be assessable during the 1958-59 marketing year. On this basis, assessment rates of 0.12 cent and 0.18 cent per pound of merchantable unshelled and merchantable shelled walnuts, respectively, would result in the collection of sufficient funds to meet the estimated expenses of the Board for the 1958-59 marketing year. The marketing agreement and order provides that funds collected in excess of expenditures for a marketing year may be used temporarily by the Board to defray expenses during the first four months of the next marketing year but must be made available to handlers from whom collected within five months after the end of the marketing year in which collected.

The proposed rule is as follows:

§ 94.310 Budget of expenses of the Walnut Control Board and rates of assessment for the marketing year beginning August 1, 1958—(a) Budget of expenses. The budget of expenses for the marketing year beginning August 1, 1958 shall be in the total amount of \$123,000 for the maintenance and functioning of the Walnut Control Board, and for such purposes as the Secretary may, pursuant to the provisions of the

agreement and order, determine to be appropriate.

(b) *Rates of assessment.* The rates of assessment payable by each handler to the Walnut Control Board on demand, shall be 0.12 cent per pound of merchantable unshelled walnuts handled or certified for handling, and 0.18 cent per pound of merchantable shelled walnuts handled or declared for handling by him during said marketing year.

Dated: October 20, 1958.

[SEAL]

S. R. SMITH,
Director,

Fruit and Vegetable Division.

[F. R. Doc. 58-8834; Filed, Oct. 23, 1958;
8:53 a. m.]

[7 CFR Part 990]

[Docket No. AO-302]

HANDLING OF MILK IN SOUTHEASTERN NEW
ENGLAND MARKETING AREADECISION WITH RESPECT TO PROPOSED
MARKETING AGREEMENT AND ORDER

CROSS REFERENCE: For notice of proposed rule making relating to the handling of milk in the Southeastern New England marketing area, 7 CFR Part 990, see Part II of this issue.

NOTICES

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[P. & S. Docket No. 402]

MARKET AGENCIES AT UNION STOCK YARDS,
CHICAGO, ILL.NOTICE OF PETITION FOR MODIFICATION OF
RATE ORDER

Pursuant to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U. S. C. 181 et seq.), an order was issued on October 1, 1958, authorizing the respondents, Market Agencies at Union Stock Yards, Chicago, Illinois, to assess the current schedule of rates and charges to and including October 21, 1959, unless modified or extended by further order before the latter date.

On October 8, 1958, a petition was filed on behalf of The Chicago Live Stock Exchange requesting authority to modify the current schedule of rates and charges as indicated below:

B-12 Hogs:

	Cents per head
Consignments of one head and one head only:	
Each head weighing 250 pounds or over	71½
Each head weighing under 250 pounds	56½
Consignments of more than one head:	
First 10 head in each consignment	48½
Next 15 head in each consignment	43½
Each head over 25 in each consignment	38½

B-13 Hogs, by rail, maximum charge:

In no instance shall the charge for selling a consignment of hogs arriving by rail exceed \$32.75 for each single deck car, and \$45.00 for each double deck car, plus extra service charges provided in section E.

B-14 Hogs, by other than rail, maximum charge:

In no instance shall the charge for selling a consignment of hogs arriving other than by rail exceed the aggregate of \$32.75 for the first 18,000 pounds, plus 16 cents for each additional 100 pounds or fraction thereof, plus extra service charges provided in section E.

The modifications, if authorized, will produce additional revenue for the respondents and increase the cost of marketing livestock. Accordingly, it appears that this public notice of the filing of the petition and its contents should be given in order that all interested persons may have an opportunity to indicate a desire to be heard in the matter.

All interested persons who desire to be heard in the matter shall notify the Hearing Clerk, United States Department of Agriculture, Washington 25, D. C., within 15 days after the publication of this notice.

Done at Washington, D. C., this 21st day of October 1958.

[SEAL]

DAVID M. PETTUS,

Director,

Livestock Division,
Agricultural Marketing Service.

[F. R. Doc. 58-8834; Filed, Oct. 23, 1958;
8:56 a. m.]

DEPARTMENT OF COMMERCE

Maritime Administration

TRADE ROUTE NO. 6; U. S. NORTH ATLANTIC/
SCANDINAVIA AND BALTICNOTICE OF TENTATIVE CONCLUSIONS AND
DETERMINATIONS REGARDING ESSENTIALITY
AND UNITED STATES FLAG SERVICE
REQUIREMENTS

Notice is hereby given that on October 20, 1958, the Maritime Administrator, acting pursuant to section 211 of the Merchant Marine Act, 1936, as amended, tentatively found and determined that United States flag passenger ship sailings of not less than one and not more than four per annum, on Trade Route No. 6 (between U. S. North Atlantic Ports, Maine-Virginia, inclusive, and ports in Scandinavian and Baltic countries), with new modern ships of at least 200 passenger capacity and 20-knot speed, are essential to the promotion, development, expansion and maintenance of the foreign commerce of the United States, and that such operation will provide a passenger service of sufficient frequency and regularity so as to furnish adequate, regular, certain, and permanent service on Trade Route No. 6.

Any person, firm or corporation having an interest in the foregoing, who desires to offer comments and views or request a hearing thereon, should submit same in writing to the Chief, Office of Government Aid, Maritime Administration, De-

partment of Commerce, Washington 25, D. C., by close of business on November 21, 1958. In the event a hearing is requested, a statement must be included giving the reasons therefor. Any hearing thereby afforded will be before an Examiner on an informal basis only. The Maritime Administrator will consider these comments and views and take such action with respect thereto as in his discretion he deems warranted.

Dated: October 21, 1958.

By order of the Maritime Administrator.

[SEAL] JAMES L. PIMPER,
Secretary.

[P. R. Doc. 58-8827; Filed, Oct. 23, 1958;
8:54 a. m.]

ATOMIC ENERGY COMMISSION

[Docket No. 27-5]

WALKER TRUCKING CO.

ORDER GRANTING INTERVENTION AND DESIGNATING PLACE AND DATES FOR PRE-HEARING CONFERENCE AND HEARING

On September 8, 1958, the Board of Selectmen of the Town of Portland, Middlesex County, Connecticut filed a request, which is considered as a petition, to intervene in the above designated proceeding and therein alleged generally that the area proposed to be utilized by the applicant to store and package the by-product and source waste material for sea disposal was too small to afford adequate protection to persons within the community. Answers to the foregoing petition have been filed by the Staff of the Commission and by the applicant. The Staff alleged that it had no information as to the nature of the controversy raised by the petition to intervene and requested a pre-hearing conference in order to ascertain the issues and for the settlement of the proceeding or any of the issues. The applicant in its answer alleged generally that the Board of Selectmen did not have any proper interest to justify its intervention in the proceeding. The applicant in a separate communication alleged that it had received some information that the Board might not want to participate in a hearing.

The Hearing Examiner finds:

1. The main issue involved in this proceeding concerns the safety of the proposed transportation, and the storage and packaging, particularly in the vicinity of Portland, Connecticut, of the by-product and source material wastes described in the application.

2. The Board of Selectmen of the Town of Portland, Connecticut, has a legitimate interest in the protection of the health and safety of all of the persons constituting the inhabitants of the community.

3. The request by the Staff for a pre-hearing conference should be granted.

4. The interests and continued participation of the persons permitted to be parties in this proceeding can best be resolved and reflected in the official record to be prepared at the public hearing to be held in this matter.

The Hearing Examiner orders:

Pursuant to the Atomic Energy Act of 1954, including particularly section 181 or 189, and the rules of practice of the Commission in Part 2 of 10 CFR:

A. The petition to intervene filed by the Board of Selectmen of the Town of Portland, Connecticut, is hereby granted and said Board is permitted to participate in this proceeding.

B. A pre-hearing conference shall be convened in a courtroom at the Federal Courthouse in the City of Hartford, Connecticut, on November 18, 1958 at 10:00 a. m., e. s. t., for the purposes of ascertainment of the issues to be determined in this proceeding and for related dispositions thereof.

C. A public hearing shall be convened in this proceeding in a courtroom at the Federal Courthouse in the City of Hartford, Connecticut, on November 19, 1958, at 10:00 a. m., e. s. t., for the consideration and determination of the matters raised and issues presented by the application filed herein and by the petition of intervention and answers filed thereto. The main issue to be considered at the hearing will include:

(a) Whether the applicant will conduct its proposed transportation, storage, packaging, and disposal activity, particularly in the vicinity of Portland, Connecticut, in accordance with the requirements of the Atomic Energy Act, the rules and regulations issued thereunder, and in accordance with reasonable safety and protection for the persons and community affected by such activity.

Answers may be served and filed pursuant to § 2.736 of the rules of practice on or before October 31, 1958. If additional issues which are substantially different than the above issue are ascertained as a result of the pre-hearing conference, answers, if any are desired, may be served on or before the date designated for hearing of this proceeding.

Issued: October 16, 1958.

SAMUEL W. JENSCH,
Hearing Examiner.

[P. R. Doc. 58-8765; Filed, Oct. 23, 1958;
8:45 a. m.]

[Docket No. 50-34]

WESTINGHOUSE ELECTRIC CORP.

NOTICE OF ISSUANCE OF FACILITY LICENSE AMENDMENT

Please take notice that the Atomic Energy Commission has issued Amendment No. 3 set forth below to License No. CX-6 authorizing Westinghouse Electric Corporation to conduct critical experiments relating to the Belgian Reactor-3 (BR-3), in its Westinghouse Reactor Evaluation Center (CRX) facility, located near Waltz Mill in Westmoreland County, Pennsylvania.

The Commission has found that conduct of the experiments in accordance with the terms and conditions of the license as amended will not present any undue hazard to the health and safety of the public and will not be inimical to the common defense and security, and

that prior public notice of proposed issuance of this amendment is not necessary in the public interest since the conduct of the proposed experiments would not present any substantial change in the hazards to the health and safety of the public from those previously considered and evaluated in connection with the previously approved operation of the facility.

In accordance with the Commission's rules of practice (10 CFR Part 2), the Commission will direct the holding of a formal hearing on the matter of issuance of the license amendment upon receipt of a request therefor from the licensee or an intervenor within 30 days after the issuance of the license amendment. For further details, see (1) the application for license amendment, by Westinghouse Electric Corporation and (2) a hazards analysis of the experiments prepared by the Division of Licensing and Regulation, both on file at the Commission's Public Document Room, 1717 H Street NW., Washington, D. C. A copy of item (2) above may be obtained at the Commission's Public Document Room or upon request addressed to the Atomic Energy Commission, Washington 25, D. C., Attention: Director, Division of Licensing and Regulation.

Dated at Germantown, Md., this 17th day of October 1958.

For the Atomic Energy Commission.

EBER R. PRICE,
Acting Director, Division of
Licensing and Regulation.

[License No. CX-6, Amdt. 3]

In addition to activities previously authorized by the Commission under License No. CX-6, as amended, the Westinghouse Electric Corporation (hereinafter referred to as "the licensee") is authorized to perform the Belgian Reactor-3 (BR-3), critical experiments described in its application amendment dated August 25, 1958, in the Westinghouse Reactor Evaluation Center CRX facility in accordance with the procedures and subject to the limitations stated or incorporated in said application amendment.

In performing these experiments the licensee shall comply with the conditions and requirements contained in paragraph 4 of License No. CX-6, as amended.

This amendment is effective as of the date of issuance.

Date of issuance: October 17, 1958.

For the Atomic Energy Commission.

EBER R. PRICE,
Acting Director,
Division of Licensing and Regulation.

[P. R. Doc. 58-8788; Filed, Oct. 23, 1958;
8:45 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 9735]

AMERICAN AIRLINES, INC.; ENFORCEMENT
PROCEEDING

NOTICE OF PREHEARING CONFERENCE

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on November 5, 1958, at 10:00 a. m., e. s. t., in Room E-210, Temporary Building No. 5, 16th Street and Constitution Avenue NW.,

Washington, D. C., before Examiner James S. Keith.

Dated at Washington, D. C., October 20, 1958.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 58-8829; Filed, Oct. 23, 1958;
8:54 a. m.]

[Docket Nos. 9647, 9648]

TRANSPORTES AEREOS NACIONALES, S. A.
NOTICE OF POSTPONEMENT OF PREHEARING
CONFERENCE

In the matter of the applications of Transportes Aereos Nacionales, S. A. for a renewal of its foreign air carrier permit authorizing service between Tegucigalpa and San Pedro Sula, Honduras, and Miami via intermediate points; and for an amendment of its foreign air carrier permit authorizing service between Miami and Tegucigalpa and beyond that point to Managua, Nicaragua; Guayaquil, Ecuador and Lima, Peru.

Notice is hereby given that the prehearing conference on the above-entitled applications now assigned to be held on October 27, 1958 is postponed to November 14, 1958, 10:00 a. m., e. s. t., in Room E-224, Temporary Building No. 5, 16th Street and Constitution Avenue NW., Washington, D. C., before Examiner Richard A. Walsh.

Dated at Washington, D. C., October 20, 1958.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 58-8830; Filed, Oct. 23, 1958;
8:54 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-16591]

MAGNOLIA PETROLEUM CO. ET AL.

ORDER FOR HEARING, SUSPENDING PROPOSED
CHANGE IN RATE, AND ALLOWING IN-
CREASED RATE TO BECOME EFFECTIVE

OCTOBER 17, 1958.

Magnolia Petroleum Company, Operator, et al. (Respondent) on September 19, 1958, tendered for filing a proposed change in its presently effective rate schedule for the sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, undated.
Purchaser: Trunkline Gas Company.
Rate schedule designation: Supplement
No. 11 to Respondent's FPC Gas Rate Schedule No. 41.

Effective date: October 20, 1958 (effective date is the first day after expiration of the required thirty days' notice).

The increased rate and charge so proposed is intended to reflect (in whole or in part) the additional "excise, license, or privilege tax" of one cent per Mcf levied by the State of Louisiana pursuant to Act No. 8 of 1958 (House Bill No. 303), as approved on June 16, 1958, amending

Title 47 of the Louisiana Revised Statutes of 1950. The Commission is advised that litigation is being instituted to challenge the constitutionality of the said Act No. 8 of 1958. In consideration of this fact, and in order to assure appropriate refund in the event said Act No. 8 of 1958 should be declared unconstitutional or otherwise held invalid by final judicial decision, it is deemed advisable to suspend the said proposed increased rate and charge until October 21, 1958, and thereafter to permit it to become effective as of that date; provided, that within 20 days from the date of this order Respondent shall file with the Secretary of the Commission an appropriate undertaking to assure such refund as may be ordered.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that the above-designated supplement be suspended and the use thereof deferred as hereinafter ordered.

(2) It is necessary and proper in the public interest in carrying out the provisions of the Natural Gas Act that Respondent's proposed increased rate be made effective as hereinafter provided and that Respondent be required to file an undertaking as hereinafter ordered and conditioned.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 11 to Respondent's FPC Gas Rate Schedule No. 41.

(B) Pending such hearing and decision thereon, Supplement No. 11 to Respondent's FPC Gas Rate Schedule No. 41 be and it hereby is suspended and the use thereof deferred until October 21, 1958, and until such further time as it is made effective in the manner hereinafter prescribed.

(C) The rate, charge, and classification set forth in Supplement No. 11 to Respondent's FPC Gas Rate Schedule No. 41 shall be effective as of October 21, 1958; *Provided, however*, That within 20 days from the date of this order, Respondent shall execute and file with the Secretary of the Commission the agreement and undertaking described in paragraph (E) below.

(D) Respondent shall refund at such times and in such amounts to the persons entitled thereto, and in such manner as may be required by final order of the Commission, the difference between the presently effective rate and charge and the proposed increased rate and charge hereby allowed to become effective in the event the additional tax of one cent per Mcf levied by the State of Louisiana is for any reason held to be invalid. Should such additional tax eventually be held

invalid and the State of Louisiana makes refund, with interest, of the tax monies collected pursuant to the said Act No. 8 of 1958, then, and in that event, a proportionate part of the interest so received by the Respondent herein shall be passed on and paid to the persons entitled thereto at such times and in such amounts, and in such manner as may be required by final order of the Commission. Respondent shall bear all costs of any such refunding; shall keep accurate accounts in detail of all amounts received by reason of the increased rate or charge allowed by this order to become effective, for each billing period, specifying by whom and in whose behalf such amounts were paid; and shall report (original and four copies), in writing and under oath, to the Commission quarterly, or monthly if Respondent so elects, for each billing period, and for each purchaser, the billing determinants of natural gas sales to such purchasers and the revenues resulting therefrom, as computed under the rate in effect immediately prior to the date upon which the increased rate allowed by this order becomes effective, and under the rate allowed by this order to become effective, together with the differences in the revenues so computed.

(E) As a condition of this order, within 20 days from the date of issuance thereof, Respondent shall execute and file in triplicate with the Secretary of this Commission its written agreement and undertaking to comply with the terms of paragraph (D) hereof, signed by a responsible officer of the corporation, evidenced by proper authority from the board of directors, and accompanied by a certificate showing service of copies thereof upon all purchasers under the rate schedule involved, as follows:

Agreement and Undertaking of _____
To Comply With the Terms and Conditions
of Paragraph (D) of Federal Power Com-
mission's Order Making Effective Proposed
Rate Changes

In conformity with the requirements of the order issued _____, in Docket No. _____, hereby agrees and undertakes to comply with the terms and conditions of paragraph (D) of said order, and has caused this agreement and undertaking to be executed and sealed in its name by its officers, thereupon duly authorized in accordance with the terms of the resolution of its board of directors, a certified copy of which is appended hereto this _____ day of _____.

By _____
Attest: _____
(Secretary)

Unless Respondent is advised to the contrary within 15 days after the date of filing such agreement and undertaking, the agreement and undertaking shall be deemed to have been accepted.

(F) If Respondent shall, in conformity with the terms and conditions of paragraph (D) of this order, make the refunds as may be required by order of the Commission, the undertaking shall be discharged; otherwise it shall remain in full force and effect.

(G) Neither the supplement hereby suspended nor the rate schedules sought to be altered thereby shall be changed until the period of suspension has ex-

pired, unless otherwise ordered by the Commission.

(H) Interested state commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-8801; Filed, Oct. 23, 1958;
8:48 a. m.]

[Docket No. G-16592]

MAGNOLIA PETROLEUM CO.

ORDER FOR HEARING AND SUSPENDING
PROPOSED CHANGE IN RATES

OCTOBER 17, 1958.

Magnolia Petroleum Company (Magnolia) on September 19, 1958, tendered for filing a proposed change in its presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, undated.

Purchaser: Phillips Petroleum Company.

Rate schedule designation: Supplement No. 7 to Magnolia's FPC Gas Rate Schedule No. 35.

Effective date: October 20, 1958 (effective date is the first day after expiration of the required thirty days' notice).

In support of the proposed revenue-sharing rate increase, Magnolia states that the contract resulted from arm's-length bargaining and was executed before the Commission exerted jurisdiction and the provisions for higher rates are part of the long-term contract. Magnolia also states the law of supply and demand should determine the rate of a wasting commodity, and cites increased costs and the necessity of further exploration for gas.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that Supplement No. 7 to Magnolia's FPC Gas Rate Schedule No. 35 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness

of the proposed increased rate and charge contained in Supplement No. 7 to Magnolia's FPC Gas Rate Schedule No. 35.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until October 21, 1958, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioner Kline dissenting).

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-8802; Filed, Oct. 23, 1958;
8:48 a. m.]

[Docket No. G-11132]

MAZEL OIL & GAS CO.

NOTICE OF APPLICATION AND DATE OF
HEARING

OCTOBER 17, 1958.

Take notice that Mazel Oil & Gas Company (Applicant), a partnership with principal place of business at Austin, Texas, filed an application on September 21, 1956, for permission to abandon service, pursuant to section 7 (b) of the Natural Gas Act, authorizing Applicant to terminate service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Heretofore, by order of the Commission issued on June 4, 1956, in the Matters of Dave Morgan, d. b. a. Dave Morgan Oil Company, et al., Docket No. G-3802, et al., Gibson Oil Corporation, Applicant's predecessor in interest, was granted a certificate of public convenience and necessity in Docket No. G-7775 authorizing the sale of natural gas in interstate commerce from the Bunker No. 1 well, Panhandle Field, Carson County, Texas, to Phillips Petroleum Company (Phillips) for resale.

Applicant proposes to permanently discontinue the aforesaid sale of gas to Phillips.

Applicant's gas sale contract dated November 18, 1952, terminated by its terms on July 1, 1957; Applicant succeeded to its interest therein on March 1, 1955. Because of a provision in said contract reserving all or a part of the gas to supply the towns of Groom, Claude and Goodnight, Texas, during emergency periods when their requirements cannot be served by Applicant from its other sources of gas, deliveries of gas to Phillips under the contract have been intermittent in nature. Applicant has

delivered no gas to Phillips under the contract since November 1955 and Phillips has requested that it be released from its contract obligations in order that it may remove its idle pipeline connecting this source of gas and put said line to use elsewhere.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on November 18, 1958, at 9:30 a. m., e. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however*, That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before November 6, 1958. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-8803; Filed, Oct. 23, 1958;
8:48 a. m.]

[Docket No. G-12903 etc.]

MAGNOLIA PETROLEUM CO. ET AL.

NOTICE OF APPLICATIONS AND DATE OF
HEARING

OCTOBER 17, 1958.

In the Matters of Magnolia Petroleum Company, Docket No. G-12903; San Juan Gas Corporation,¹ Docket No. G-12905; Continental Oil Company, Operator,² Docket No. G-12910; Shell Oil Company,³ Docket No. G-12922; Southwestern Exploration Company, Operator, et al.,⁴ Docket No. G-12923; Graham-Michaels Drilling Company, Operator, et al.,⁵ Docket No. G-12930; Michel T. Halbouty, Operator, et al.,⁶ Docket No. G-12934; R. M. Ross,⁷ Docket No. G-12941; Graham-Michaels Drilling Company,⁸ Docket No. G-12947; Union Oil and Gas Corporation of Louisiana, Operator, et al.,⁹ Docket No. G-12958; Cabot Carbon Company,¹⁰ Docket No. G-12960; The Superior Oil Company,¹¹ Docket No. G-12968; Barnwell Drilling Company, Inc.,¹² Docket No. G-12971; Creslenn Oil

¹ The proposed increased rate is based upon Phillips Petroleum Company's spiral escalation rate increases for gas sold to Michigan-Wisconsin Pipe Line Company.

Company, Operator." Docket No. G-12973; Alden E. Branine and F. G. Holl," Docket No. G-12975; Horizon Oil & Gas Company," Docket No. G-12987.

Take notice that each of the above applicants has filed an application for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing each to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the respective applications which are on file with the Commission and open to public inspection.

The respective applicants produce and propose to sell natural gas for transportation in interstate commerce for resale as indicated below:

Docket No., Field and Location, and Purchaser

G-12903; Wilshire Field, Upton County, Tex.; El Paso Natural Gas Company and Hunt Oil Company.

G-12905; Acreage in Rio Arriba County, N. Mex.; Pacific Northwest Pipeline Corporation.

G-12910; Eureka Field, Alfalfa and Grant Counties, Okla.; Cities Service Gas Company.

G-12922; Darby Creek Field, Logan County, Colo.; Kansas-Nebraska Natural Gas Company, Inc.

G-12923; Hugoton Field, Finney County, Kans.; Northern Natural Gas Company.

G-12930; Hugoton Field, Seward County, Kans.; Northern Natural Gas Company.

G-12934; Eagle Lake Field, Colorado County, Tex.; Tennessee Gas Transmission Company.

G-12941; Pistol Ridge-Maxie Field, Forrest County, Miss.; United Gas Pipe Line Company.

G-12947; Hugoton Field, Finney and Kearny Counties, Kans.; Northern Natural Gas Company.

G-12958; West Rock Island Field, Colorado County, Tex.; Tennessee Gas Transmission Company.

G-12960; Mocane Field, Beaver County, Okla.; Colorado Interstate Gas Company.

G-12968; Greenwood (Sparks) Field, Morton County, Kans.; Colorado Interstate Gas Company.

G-12971; Fort Lynn Field, Miller County, Ark.; Texas Eastern Transmission Corporation.

G-12973; Yenter Field, Logan County, Colo.; Kansas-Nebraska Natural Gas Company, Inc.

G-12975; Embury Field, Edwards County, Kans.; Northern Natural Gas Company.

G-12987; Camrick Field, Texas County, Okla.; Kansas-Nebraska Natural Gas Company, Inc.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on November 13, 1958, at 9:30 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such applications: *Provided, however*, That the Commission may, after a non-contested hearing, dispose of the pro-

ceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before November 10, 1958. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL]

JOSEPH H. GUTHRIE,
Secretary.

¹Subject contract limits production to horizons down to base of the Mesaverde Formation.

²Continental Oil Company, Operator, is filing for its working interests in the following units: Maltbie Unit, 100 percent and Davis Unit, 81.25 percent, and as Operator, lists Magnolia Petroleum Company as owner of remaining 18.75 percent interest in said Davis Unit; Continental, as non-operator, is filing for its 35.417 percent interest in the Pruitt-Nelson Unit, which is operated by Viersen and Cochran, and its interest in numerous non-utilized leases. Continental is the only signatory seller party to the gas sales contract dated May 31, 1957.

³Application covers a proposed sale of natural gas pursuant to a gas sales contract dated March 22, 1957, between Shell Oil Company, Seller, and N. C. Ginther, H. C. Warren and W. L. Ginther, d/b/a Ginther, Warren and Ginther, Buyer. By instrument of assignment dated June 1, 1947, Buyer assigned the subject contract to Kansas-Nebraska Natural Gas Company, Inc.

⁴Southwestern Exploration Company (partnership consisting of W. H. Bird and A. Leon Derby, Jr.), Operator, is filing for itself and on behalf of the following non-operating owners of working interests in the No. 2 Hett "A" Unit: R. K. Howse, E. C. Moriarty, Jr., Arch Butts, Jr., John H. Butts, A. S. Ritchie, Herman D. Ewers and Virginia Derby Howse. All are signatory seller parties to an amendatory agreement dated May 3, 1957, which adds additional acreage to a basic gas sales contract dated November 1, 1954, as amended. Southwestern is the only signatory seller party to the basic contract and was authorized in Docket No. G-10745 to sell gas under the aforesaid basic contract, which contract limits production to a depth of 3,200 feet.

⁵Application covers a proposed sale of natural gas pursuant to an amendatory agreement dated July 5, 1957, which adds additional acreage (640 acre Printz No. 1 Unit) to a basic gas sales contract dated April 30, 1955, as amended, between Michaelis Drilling Company (predecessor in interest to Graham-Michaelis Drilling Company), seller, and Northern Natural Gas Company, buyer. Michaelis Drilling Company received authorization in Docket No. G-8984 to sell gas under said basic contract, which contract limits production to a depth of 3,000 feet. By two separate instruments of assignment each dated July 19, 1957, Michaelis Drilling Company assigned 12.5 percent working interest in the subject unit to H. D. Caldwell, Sr., and 62.5 percent to Osage Oil and Gas Company, Inc., and, as Operator, retained the remaining 25 percent. In a letter filed September 29, 1957, Michaelis Drilling Company, Operator, requested that the subject application be amended to include the interests of the above-named non-operators,

⁶Michel T. Halbouty, Operator, is filing for himself and on behalf of non-operator, Frank Stanton. Both are signatory seller parties to the gas sales contract dated June 26, 1957.

⁷R. M. Ross is filing for his working interests in approximately 6,400 acres and is the only signatory seller party to the gas sales contract dated July 5, 1957, which limits production to horizons between surface and base of the Tuscaloosa Formation.

⁸Application covers a proposed sale of natural gas pursuant to an amendatory agreement dated July 9, 1957, which adds additional acreage to a basic gas sales contract dated April 30, 1955, between Michaelis Drilling Company (predecessor in interest to Graham-Michaelis Drilling Company), seller, and Northern, buyer. Michaelis Drilling Company received authorization in Docket No. G-8984 to sell gas under said basic contract. Production is limited to horizons above 3,000 feet below surface of ground.

⁹Union Oil and Gas Corporation of Louisiana, Operator, is filing for itself and on behalf of the following non-operators: Humble Oil & Refining Company, Midstates Oil Corporation and Skelly Oil Company. All are signatory seller parties to the gas sales contract dated July 1, 1957.

¹⁰Application covers a proposed sale of natural gas pursuant to an amendatory agreement dated June 25, 1957, which adds additional acreage to a basic gas sales contract dated May 29, 1956. Applicant was authorized in Docket No. G-10073 to sell gas under the basic contract. A portion of the subject acreage covers Applicant's 50 percent reversionary interest in 1,680 acres, which reversion will occur after present leaseholders have recovered their investment for drilling and completing wells on such acreage.

¹¹Application covers a proposed sale of natural gas pursuant to an amendatory agreement dated June 20, 1957, which adds additional acreage to a basic gas sales contract dated May 6, 1954, as amended. Applicant was authorized in Docket No. G-6178 to sell gas under the basic contract.

¹²Production is limited to depths down to base of the Rodessa Formation.

¹³Creslenn Oil Company, Operator, is filing for its 47.5 percent interest and on behalf of the following non-operating owners of working interests in the Middlestadt Lease: Frederick M. Mayer, Franklin I. Brinegar, Euna M. Alexander and T. A. Knight, 5.555 percent each; J. R. Bower, Jr., William McCormick Blair, Stanley Marcus, Bess W. Schoellkopf and Lester C. Rogers, 5.555 percent each and N. P. Brown, 2.5 percent. Operator is the only signatory seller party to the gas sales contract dated July 3, 1957.

¹⁴Application covers a proposed sale of natural gas pursuant to an amendatory agreement dated June 14, 1957, which adds additional acreage to a basic gas sales contract dated December 31, 1954. Applicants were authorized in Docket No. G-6860 to sell gas under the basic contract.

¹⁵Horizon Oil & Gas Company, a partnership consisting of N. Bruce Calder and Curtis E. Calder, Jr., is filing for its 24.9 percent working interest in the E. C. Green No. 1 Well. Both partners are signatory seller parties to the gas sales contract dated April 22, 1957, which limits production to depths below sea level or the Hugoton Formation.

[F. R. Doc. 58-8804; Filed, Oct. 23, 1958; 8:49 a. m.]

[Docket No. G-16512]

GENERAL AMERICAN OIL CO. OF TEXAS

ORDER FOR HEARING AND SUSPENDING
PROPOSED CHANGE IN RATE

OCTOBER 17, 1958.

General American Oil Company of Texas (General American), on Septem-

ber 19, 1958, tendered for filing a proposed change in its presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission.¹ The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated September 9, 1958.

Purchase: Louisiana Nevada Transit Company.

Rate schedule designation: Supplement No. 4 to General American's FPC Gas Rate Schedule No. 6.

Effective date: October 20, 1958 (effective date is the first day after expiration of the required thirty days' notice).

General American in support of the proposed rate increase cites the provision of its rate schedule providing the re-determination rate shall be the weighted average North Louisiana price, cites arm's-length bargaining and the long term of the contract and the low initial price thereunder.

Protest to the acceptance of this rate filing was filed by Louisiana Nevada Transit Company, which purchases the gas here involved and which urged rejection of this rate filing for the reason that the Cotton Valley Operators Committee (Committee) is the sole party entitled to file a rate schedule as affirmed by Commission opinion No. 314.²

General American states that it acquired its interest in the Cotton Valley Unit from North American Oil Consolidated in December 1950 and at the time of the acquisition the interest was not subject to any selling of the Committee, such authority having been terminated as of June 1, 1949, by an amendment to the Cotton Valley Unitization and Pressure Maintenance Agreement. General American also states that it has never authorized the Committee to sell any of its gas and that in the lack of such authority it should be treated as a signatory party under the Commission's Regulations. General American further states that it is aware of the Commission's order directing the Committee to make rate filings for gas sold from the unit, but claims that it cannot cause the Committee to make the filings and is filing to protect its legal rights.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

(1) The proposed change in rates filed by General American should be accepted conditionally pending final determination of Commission Opinion No. 314.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the

said proposed change, and that the above-designated supplement be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) The proposed change in rate filed by General American is accepted conditionally, pending final determination of Commission Opinion No. 314.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge.

(C) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until March 20, 1959, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(D) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby shall be changed until this proceeding has been disposed of, or until the period of suspension has expired, unless otherwise ordered by the Commission.

(E) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTHRIE,
Secretary.

[F. R. Doc. 58-8805; Filed, Oct. 23, 1958;
8:49 a. m.]

[Docket No. G-16513]

KIRBY PRODUCTION CO.

ORDER FOR HEARING AND SUSPENDING
PROPOSED CHANGE IN RATE

OCTOBER 17, 1958.

Kirby Production Company (Kirby) on September 19, 1958, tendered for filing a proposed change in its presently effective rate schedule for the sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Instrument of Ratification and Adoption, dated September 15, 1958. Contract, dated January 6, 1956.

Purchaser: Natural Gas Pipeline Company of America.

Rate schedule designation: Kirby's FPC Gas Rate Schedule No. 12. Supplement No. 1 to Kirby's FPC Gas Rate Schedule No. 12.

Effective date: October 20, 1958 (effective date is the first day after expiration of the required thirty days notice).

Kirby submitted, as an "initial" rate schedule, an agreement adopting, for the sale of natural gas by Kirby, the terms and conditions of a contract and supplementary agreement thereto between

¹ Kirby applied for a certificate of public convenience and necessity for the sale in Docket No. G-16366.

Atlantic Refining Company (Atlantic) and Natural Gas Pipeline Company of America. The agreement provides for the sale of gas from Kirby's lease which has been pooled with Atlantic's acreage to form a single unit in which Kirby owns 12.5 percent interest of all gas produced from said unit and joint interest wells thereon. Atlantic, the operator, has been selling the gas from the unit under its FPC Gas Rate Schedule No. 133 and, as operator, filed for Kirby's interest. A proposed rate of 16.4 cents per Mcf under Atlantic's rate schedule is now suspended until October 10, 1958 in Docket No. G-15027, and Kirby proposes the same rate.

Kirby does not definitely state that its gas from the subject unit (McDonald Unit) is presently being delivered and sold under Atlantic's rate schedule. However, Atlantic has previously submitted a statement showing Kirby's 12.5 percent interest in the unit, and, in filing for the suspended rate of 16.4 cents per Mcf, Atlantic listed the interest of Kirby in the unit. Under these circumstances, the sale of Kirby's gas is not a new sale, and the rate schedule should not have been submitted as an "initial" rate schedule but as a change in rate from the now effective rate of 16.2 cents to 16.4 cents per Mcf.

Kirby has not shown why its change in rate should be allowed to go into effect in contrast to the suspension of Atlantic's change in rate. In addition, the increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that Kirby's FPC Gas Rate Schedule No. 12 and Supplement No. 1 thereto be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Kirby's FPC Gas Rate Schedule No. 12 and Supplement No. 1 to Kirby's FPC Gas Rate Schedule No. 12.

(B) Pending such hearing and decision thereon, said supplement be and it hereby is suspended and the use thereof deferred until October 21, 1958, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the rate schedule nor the supplement thereto hereby suspended shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested state commissions may participate as provided by §§ 1.8 and 1.37

¹ Present rate previously suspended is in effect subject to refund in Docket No. G-10390.

² Rehearing of said Opinion No. 314 and the accompanying order was granted by order issued September 19, 1958, in Docket Nos. G-4932, et al., but a final order thereon has not been issued.

(f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-8806; Filed, Oct. 23, 1958;
8:49 a. m.]

[Docket No. G-16533]

GETTY OIL CO.

ORDER FOR HEARING AND SUSPENDING
PROPOSED CHANGE IN RATE

OCTOBER 17, 1958.

Getty Oil Company (Getty) on September 25, 1958, tendered for filing a proposed change in its presently effective rate schedule¹ for the sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated September 22, 1958.

Purchaser: El Paso Natural Gas Company.
Rate schedule designation: Supplement No. 5 to Getty's FPC Gas Rate Schedule No. 1.
Effective date: October 26, 1958 (effective date is that proposed by Getty).

Getty proposes to increase the price of natural gas in the Dollarhide Field, Crockett County, Texas, so as to reflect the change due to the contractually provided favored-nation provisions which are said to be triggered by the 15.05 percent and the 10.494 percent spiral escalation increases of Phillips Petroleum Company to El Paso in the Permian Basin Area of Texas and New Mexico.²

In support of the proposed increased price, Getty adds that the gas sales contract makes it possible for the seller to benefit from any increases in the commodity value of the gas during the term of the contract.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that Supplement No. 5 to Getty's FPC Gas Rate Schedule No. 1 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from

the Secretary concerning the lawfulness of the proposed increased rates and charges contained in Supplement No. 5 to Getty's FPC Gas Rate Schedule No. 1.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until March 26, 1959, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-8807; Filed, Oct. 23, 1958;
8:49 a. m.]

[Docket No. G-16534]

SINCLAIR OIL AND GAS CO.

ORDER FOR HEARING AND SUSPENDING
PROPOSED CHANGES IN RATES

OCTOBER 17, 1958.

Sinclair Oil and Gas Company (Sinclair) on September 26, 1958, tendered for filing five proposed changes in its presently effective rate schedules¹ for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notices of Change, dated September 24 and 25, 1958.

Purchaser: El Paso Natural Gas Company.
Rate schedule designations: Supplement No. 8 to Sinclair's FPC Gas Rate Schedule No. 7; Supplement No. 5 to Sinclair's FPC Gas Rate Schedule No. 13; Supplement No. 3 to Sinclair's FPC Gas Rate Schedule No. 28; Supplement No. 4 to Sinclair's FPC Gas Rate Schedule No. 92.

Effective date: October 27, 1958 (effective date is that proposed by Sinclair).

Sinclair proposes to increase the price of natural gas in the Permian Basin Area of Texas and New Mexico so as to reflect the change due to the contractually provided favored-nation provisions which are said to be triggered by the 15.05 percent and the 10.49 percent spiral escalation increases of Phillips Petroleum Company to El Paso in that area.²

In support of the favored-nation increases, Sinclair states that the proposed prices will help Sinclair obtain a reasonable rate of return which is not excessive but is commensurate with the risks involved in the gas business and said prices

represent fair consideration for the commitment of gas for the term of the instant contracts. In further support, Sinclair cites Staff Exhibit No. 22 in Docket No. G-9292, et al.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that Supplement No. 8 to Sinclair's FPC Gas Rate Schedule No. 7; Supplement No. 5 to Sinclair's FPC Gas Rate Schedule No. 13; Supplement No. 3 to Sinclair's FPC Gas Rate Schedule No. 28 and Supplement No. 4 to Sinclair's FPC Gas Rate Schedule No. 92 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in Supplement No. 8 to Sinclair's FPC Gas Rate Schedule No. 7; Supplement No. 5 to Sinclair's FPC Gas Rate Schedule No. 13; Supplement No. 3 to Sinclair's FPC Gas Rate Schedule No. 28 and Supplement No. 4 to Sinclair's FPC Gas Rate Schedule No. 92.

(B) Pending such hearing and decision thereon, said supplements be and they are hereby suspended and the use thereof deferred until March 27, 1959, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the schedules nor supplements hereby suspended shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested state commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.³

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-8808; Filed, Oct. 23, 1958;
8:49 a. m.]

[Docket No. G-16535]

G. STRATTON, JR., ET AL.

ORDER FOR HEARING AND SUSPENDING
PROPOSED CHANGE IN RATE

OCTOBER 17, 1958.

G. Stratton, Jr. (Operator) et al. (Stratton) on September 29, 1958, tendered for filing a proposed change in its

* Commissioner Hussey dissenting as to the suspension of Supplement No. 4 to FPC Gas Rate Schedule No. 92.

¹ Supplement No. 4 to Getty's FPC Gas Rate Schedule No. 1 is in effect subject to refund in Docket No. G-14033.

² Phillips' tenders reflecting said changes were suspended in Docket Nos. G-4769 and G-12948, and are currently in effect subject to refund.

³ Sinclair's FPC Gas Rate Schedule Nos. 7, 13, 28 and 92 are in effect subject to refund in Docket No. G-14060.

⁴ Phillips' tenders reflecting said price increases were suspended in Docket Nos. G-4769 and G-12948, and are currently in effect subject to refund.

presently effective rate schedule for the sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated September 28, 1958.

Purchaser: El Paso Natural Gas Company. Rate schedule designation: Supplement No. 4 to Stratton's Gas Rate Schedule No. 1.

Effective date: October 30, 1958 (effective date is the first day after expiration of the required 30-days' notice).

Stratton proposes to increase the price of natural gas in the Noelke Field, Crockett County, Texas, by 2.5767 cents per Mcf, from 9.5 cents to 12.0767 cents, to reflect the change due to the contractually provided favored-nation provisions which are said to be triggered by the 15.05 percent and the 10.494 percent spiral escalation increases of Phillips Petroleum Company to El Paso in the Permian Basin Area of Texas and New Mexico.¹

In support of the favored nation increase, Stratton cites the gas sales contract and a letter from El Paso as to the implementation of said escalation provisions.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that Supplement No. 4 to Stratton's FPC Gas Rate Schedule No. 1 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in Supplement No. 4 to Stratton's FPC Gas Rate Schedule No. 1.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until March 30, 1959, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37

(f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-8809; Filed, Oct. 23, 1958; 8:50 a. m.]

[Docket No. G-16536]

TEXAS CO.

ORDER FOR HEARING AND SUSPENDING
PROPOSED CHANGES IN RATES

OCTOBER 17, 1958.

On September 23, 1958, The Texas Company (Texas), tendered for filing proposed changes in its presently effective rate schedules¹ for the sale of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute an increased rate and charge, are contained in the following designated filings:

Description: Notices of Change, undated. Purchaser: El Paso Natural Gas Company.

Rate schedule designations: Supplement No. 6 to Texas' FPC Gas Rate Schedule No. 23. Supplement No. 6 to Texas' FPC Gas Rate Schedule No. 24. Supplement No. 2 to Texas' FPC Gas Rate Schedule No. 169.

Effective date: October 24, 1958 (effective date is the first day after expiration of the required 30-days' notice).

Texas proposes to increase the price of natural gas in Regan, Upton and Crockett counties, Texas, so as to reflect the changes due to the contractually provided favored nation provisions which are said to be triggered by the 15.05 percent and the 14.494 percent spiral escalation increases of Phillips Petroleum Company to El Paso in the Permian Basin area of Texas and New Mexico.² In support of said changes, Texas cites the contract provisions and states that the proposed prices are justified because of the increasing costs.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that Supplement No. 6 to Texas' FPC Gas Rate Schedule No. 23, Supplement No. 6 to Texas Gas Rate Schedule No. 24 and Supplement No. 2 to Texas' FPC Gas Rate Schedule No. 169 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4

¹ Rates and charges in Texas' FPC Gas Rate Schedule Nos. 23, 24 and 169 currently in effect subject to refund in Docket Nos. G-13162, G-13190 and G-14062, respectively.

² Phillips tenders reflecting said changes were suspended in Docket Nos. G-4769 and G-12948, and are currently in effect subject to refund.

and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in Supplement No. 6 to Texas' FPC Gas Rate Schedule No. 23; Supplement No. 6 to Texas' Gas Rate Schedule No. 24 and Supplement No. 2 to Texas' FPC Gas Rate Schedule No. 169.

(B) Pending such hearing and decision thereon, said supplements be and they are hereby suspended and the use thereof deferred until March 24, 1959, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 or 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-8810; Filed, Oct. 23, 1958; 8:50 a. m.]

[Docket No. G-16537]

TEXAS GULF PRODUCING CO. ET AL.

ORDER FOR HEARING AND SUSPENDING
PROPOSED CHANGE IN RATE

OCTOBER 17, 1958.

Texas Gulf Producing Company (Operator) et al. (Texas Gulf) September 24, 1958, tendered for filing a proposed change in its presently effective rate schedule¹ for the sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated September 19, 1958.

Purchaser: El Paso Natural Gas Company. Rate schedule designation: Supplement No. 6 to Texas Gulf's Gas Rate Schedule No. 12.

Effective date: October 25, 1958 (effective date is the first day after expiration of the required 30-days' notice).

Texas Gulf proposes to increase the price of natural gas 2.9979 cents per Mcf, from 11.0528 cents to 14.0507 cents for gas produced in Headlee Field, Ector and Midland Counties, Texas so as to reflect the change due to the contractually provided favored-nation provisions which are said to be triggered by the 15.05 percent and the 10.494 percent

¹ Supplement No. 5 to Texas Gulf's FPC Gas Rate Schedule No. 12 was suspended in Docket G-14066 and is currently in effect subject to refund.

¹ Phillips' tenders reflecting said price increases were suspended in Docket Nos. G-4769 and G-12948, and are currently in effect subject to refund.

spiral escalation increases of Phillip's Petroleum Company to El Paso in the Permian Basin Area of Texas and New Mexico.*

In support of the favored-nation increase, Texas Gulf cites the contractual provisions providing for the proposed increased price and states that such constitutes an integral part of the consideration and protects the seller against price discrimination.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that Supplement No. 6 to Texas Gulf's FPC Gas Rate Schedule No. 12 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in Supplement No. 6 to Texas Gulf's FPC Gas Rate Schedule No. 12.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until March 25, 1959, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-8811; Filed, Oct. 23, 1958;
8:50 a. m.]

[Docket No. G-16590]

GAS GATHERING CORP.

ORDER FOR HEARING, SUSPENDING PROPOSED
CHANGE IN RATE, AND ALLOWING IN-
CREASED RATE TO BECOME EFFECTIVE

OCTOBER 17, 1958.

Gas Gathering Corporation (Respondent) on September 19, 1958, tendered for

*Phillips' tenders reflecting said changes were suspended in Docket Nos. G-4769 and G-12948, and are currently in effect subject to refund.

filing a proposed change in its presently effective rate schedule for the sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated September 17, 1958.

Purchaser: Transcontinental Gas Pipeline Corporation.

Rate schedule designation: Supplement No. 3 to Respondent's FPC Gas Rate Schedule No. 1.

Effective date: October 20, 1958 (effective date is the first day after expiration of the required thirty days' notice).

The increased rate and charge so proposed is intended to reflect (in whole or in part) the additional "excise, license, or privilege tax" of one cent per Mcf levied by the State of Louisiana pursuant to Act No. 8 of 1958 (House Bill No. 303), as approved on June 18, 1958, amending Title 47 of the Louisiana Revised Statutes of 1950. The Commission is advised that litigation is being instituted to challenge the constitutionality of the said Act No. 8 of 1958. In consideration of this fact, and in order to assure appropriate refund in the event said Act No. 8 of 1958 should be declared unconstitutional or otherwise held invalid by final judicial decision, it is deemed advisable to suspend the said proposed increased rate and charge until October 21, 1958, and thereafter to permit it to become effective as of that date; provided, that within 20 days from the date of this order Respondent shall file with the Secretary of the Commission an appropriate undertaking to assure such refund as may be ordered.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that the above-designated supplement be suspended and the use thereof deferred as hereinafter ordered.

(2) It is necessary and proper in the public interest in carrying out the provisions of the Natural Gas Act that Respondent's proposed increased rate be made effective as hereinafter provided and that Respondent be required to file an undertaking as hereinafter ordered and conditioned.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 3 to Respondent's FPC Gas Rate Schedule No. 1.

(B) Pending such hearing and decision thereon, Supplement No. 3 to Respondent's FPC Gas Rate Schedule No. 1 be and it hereby is suspended and the use thereof deferred until October 21, 1958, and until such further time as

it is made effective in the manner hereinafter prescribed.

(C) The rate, charge, and classification set forth in Supplement No. 3 to Respondent's FPC Gas Rate Schedule No. 1 shall be effective as of October 21, 1958: *Provided, however*, That within 20 days from the date of this order, Respondent shall execute and file with the Secretary of the Commission the agreement and undertaking described in paragraph (E) below.

(D) Respondent shall refund at such times and in such amounts to the persons entitled thereto, and in such manner as may be required by final order of the Commission, the difference between the presently effective rate and charge and the proposed increased rate and charge hereby allowed to become effective in the event the additional tax of one cent per Mcf levied by the State of Louisiana is for any reason held to be invalid. Should such additional tax eventually be held invalid and the State of Louisiana makes refund, with interest, of the tax monies collected pursuant to the said Act No. 8 of 1958, then, and in that event, a proportionate part of the interest so received by the Respondent herein shall be passed on and paid to the persons entitled thereto at such times and in such amounts, and in such manner as may be required by final order of the Commission. Respondent shall bear all costs of any such refunding; shall keep accurate accounts in detail of all amounts received by reason of the increased rate or charge allowed by this order to become effective, for each billing period, specifying by whom and in whose behalf such amounts were paid; and shall report (original and four copies), in writing and under oath, to the Commission quarterly, or monthly if Respondent so elects, for each billing period, and for each purchaser, the billing determinants of natural gas sales to such purchasers and the revenues resulting therefrom, as computed under the rate in effect immediately prior to the date upon which the increased rate allowed by this order becomes effective, and under the rate allowed by this order to become effective, together with the differences in the revenues so computed.

(E) As a condition of this order, within 20 days from the date of issuance thereof, Respondent shall execute and file in triplicate with the Secretary of this Commission its written agreement and undertaking to comply with the terms of paragraph (D) hereof, signed by a responsible officer of the corporation, evidenced by proper authority from the board of directors, and accompanied by a certificate showing service of copies thereof upon all purchasers under the rate schedule involved, as follows:

Agreement and Undertaking of ----- To Comply With the Terms and Conditions of Paragraph (D) of Federal Power Commission's Order Making Effective Proposed Rate Changes

In conformity with the requirements of the order issued -----, in Docket No. G-----, hereby agrees and undertakes to comply with the terms and conditions of paragraph (D) of said order, and has caused this agreement and undertaking to be executed and sealed in its name by its

officers, thereupon duly authorized in accordance with the terms of the resolution of its board of directors, a certified copy of which is appended hereto this _____ day of _____.

Attest: _____
By _____
(Secretary)

Unless Respondent is advised to the contrary within 15 days after the date of filing such agreement and undertaking, the agreement and undertaking shall be deemed to have been accepted.

(F) If Respondent shall, in conformity with the terms and conditions of paragraph (D) of this order, make the refunds as may be required by order of the Commission, the undertaking shall be discharged; otherwise, it shall remain in full force and effect.

(G) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby shall be changed until the period of suspension has expired, unless otherwise ordered by the Commission.

(H) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-8612; Filed, Oct. 23, 1958;
8:50 a. m.]

HOUSING AND HOME FINANCE AGENCY

Office of the Administrator

DESIGNATION OF ACTING ADMINISTRATOR

The officers described by position title or by individual name in the list below are hereby designated to act in the place and stead of the Housing and Home Finance Administrator, with the title of "Acting Administrator" and with all the powers, rights, and duties vested in or assigned to the said Administrator, in the event the Administrator is unable to act by reason of his absence, illness, or other cause, provided that no officer shall have authority to act as "Acting Administrator" unless all those whose titles or names precede his in this designation are unable to act by reason of absence, illness, or other cause:

- (1) Deputy Administrator;
- (2) Julian H. Zimmerman (General Counsel);
- (3) Annabelle Heath (Assistant Administrator (Program Policy));
- (4) Lewis E. Williams (Assistant Administrator (Administration)).

This designation supersedes the designation of Acting Administrator effective September 6, 1957 (22 F. R. 7295, September 12, 1957), which designation is hereby revoked.

(Reorg. Plan No. 3 of 1947, 61 Stat. 954; 62 Stat. 1283 (1948), as amended, 12 U. S. C. 1952 ed. 1701c; 63 Stat. 440 (1949), 12 U. S. C., 1952 ed. 1701d-1)

Effective as of the 24th day of October 1958.

ALBERT M. COLE,
Housing and Home
Finance Administrator.

[F. R. Doc. 58-8628; Filed, Oct. 23, 1958;
8:54 a. m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

OCTOBER 21, 1958.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 35033: *Sand from southwest to Deane and Dunham, Ky.* Filed by Southwestern Freight Bureau, Agent (No. B-7394), for interested rail carriers. Rates on sand, carloads, as described in the application, from points in Arkansas, Missouri, and Oklahoma to Deane and Dunham, Ky.

Grounds for relief: Rates constructed on basis of shortline distance formulae. Tariff: Supplement 174 to Southwestern Lines tariff I. C. C. 4135.

FSA No. 35034: *Lubricating oil from Southwest to Memphis, Tenn.* Filed by Southwestern Freight Bureau, Agent (No. B-7395), for interested rail carriers. Rates on petroleum lubricating oil, tank-car loads from points in Arkansas, Louisiana, and Texas, taking Shreveport, La., and Houston, Tex., group rates to Memphis, Tenn.

Grounds for relief: Market competition and grouping.

Tariff: Supplement 56 to Southwestern Lines tariff I. C. C. 4172.

FSA No. 35035: *Aluminum from Arkansas to Tampa, Fla.* Filed by Southwestern Freight Bureau, Agent (No. B-7397), for interested rail carriers. Rates on aluminum billets, blooms, ingots, pigs, or slabs, carloads from Jones Mills and Gum Springs, Ark., to Tampa, Fla.

Grounds for relief: Market competition.

Tariff: Supplement 6 to Southwestern Lines tariff I. C. C. 4287.

FSA No. 35036: *Trailer-on-flat-car service in the southwest.* Filed by Southwestern Freight Bureau, Agent (No. B-7399), for interested rail carriers. Rates on various commodities loaded in or on highway trailers and transported on railroad flat cars between points in southwestern territory.

Grounds for relief: Motor truck competition.

Tariff: Supplement 30 to Southwestern Lines tariff I. C. C. 4285.

FSA No. 35037: *Paper articles from North Carolina to the South.* Filed by O. W. South, Jr., Agent (SFA No. A3738), for interested rail carriers. Rates on paper articles, viz: cushions or pads, packing, indented chipboard, in ma-

chine pressed bales, carloads from Granits Falls, High Point, and South High Point, N. C., to points in southern territory, Ohio and Mississippi River crossings, points in Virginia, and Washington, D. C.

Grounds for relief: Short-line distance formula and grouping.

Tariff: Supplement 4 to Southern Freight Association tariff I. C. C. S-34.

FSA No. 35038: *Soda ash from Ohio and Michigan to Carteret, N. J.* Filed by O. E. Schultz, Agent (ER No. 2467), for interested rail carriers. Rates on soda ash, in bulk, carloads from Barberton, Ohio, Detroit and Wyandotte, Mich., to Carteret, N. J.

Grounds for relief: Market competition.

Tariff: Supplement 20 to Tariff Publishing Officer Hinsch's tariff I. C. C. C-17.

FSA No. 35039: *Liquefied chlorine gas from Brunswick, Ga., to Acme, N. C.* Filed by O. W. South, Jr., Agent (SFA No. A3738), for interested rail carriers. Rates on liquefied chlorine gas, tank-car loads from Brunswick, Ga., to Acme, Ga.

Grounds for relief: Barge competition.

Tariff: Supplement 72 to Southern Freight Association tariff I. C. C. 1536.

FSA No. 35040: *Substituted service, rail for motor, Chicago Great Western Railway Company.* Filed by A. R. Fowler, Agent (No. 5), for the Chicago Great Western Railway Company, and interested motor carriers. Rates on various commodities loaded in highway trailers and transported on railroad flat cars between Chicago, Ill., and St. Paul, Minn.

Grounds for relief: Motor truck competition.

Tariff: Agent A. R. Fowler's tariff MF-I. C. C. A-79.

FSA No. 35041: *Commodity rates from and to Riveco, Va.* Filed by O. W. South, Jr., Agent (SFA No. A3737) for interested rail carriers. Rates on all commodities (other than coal and coke), carload and less-than-carload between Riveco, Va., on the one hand, and points in the United States and Canada, on the other.

Grounds for relief: Establishment of rates from and to a new station.

AGGREGATE-OF-INTERMEDIATES

FSA No. 35042: *Passenger fares of The New York, New Haven and Hartford R. R. Co.* Filed by The New York, New Haven and Hartford Railroad Company (No. 2), for itself and other rail carriers. Rates involving fares for the transportation of passengers between points in Massachusetts, on one hand, and points in Rhode Island, Connecticut, and New York, also points south and west thereof, on the other.

Grounds for relief: Establishment of through one-factor fares higher than the aggregate of the intermediate fares.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F. R. Doc. 58-8316; Filed, Oct. 23, 1958;
8:51 a. m.]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority 27 (Revision 3)]

DIRECTOR, OFFICE OF ECONOMIC ADVISER

DELEGATION OF AUTHORITY RELATING TO
OFFICE OF ECONOMIC ADVISOR

I. Pursuant to the authority vested in the Administrator by the Small Business Act (Pub. Law 85-536) as amended (Pub. Law 85-699); the Small Business Investment Act of 1958 (Pub. Law 85-699); Reorganization Plan No. 2 of 1954, dated April 29, 1954 (83d Cong., 2d Sess.); Reorganization Plan No. 1 of 1957, dated April 29, 1957 (85th Cong., 1st Sess.); and the Memorandum of Understanding, dated October 19, 1956, as amended, between the Secretary of the Interior and the Administrator of the Small Business Administration (pursuant to section 4 of the Fish and Wildlife Act of 1956 (70 Stat. 1119, 1121)), relating to the Fisheries Loan Fund, there is hereby delegated to the Director, Office of Economic Adviser, the authority:

A. *Specific.* 1. To take any and all actions relating to matters involving Small Business Certificates or other size determinations including the issuance or denial of such certificates under statutory or other authority of this Agency.

2. To authorize expenditures for registration fees not in excess of \$25 for each registration.

3. To approve
(a) Sick and annual leave;
(b) Leave without pay not in excess of 30 days; and
(c) Overtime for employees under his supervision.

4. To authorize or approve his personal travel and the travel of employees of the Office of Economic Adviser except travel where actual subsistence expenses are requested.

B. *Correspondence.* To sign non-policy-forming correspondence, except Congressional correspondence, relating to the functions described for the Office of Economic Adviser in section 101 of SBA-100.

II. The authorities delegated in I.A. 1, 2, 3 (b) and (c), and 4 above may not be redelegated.

III. All authority delegated herein may be exercised by any SBA employee designated as Acting Director, Office of Economic Adviser.

IV. All previous authority delegated by the Administrator to the Director, Office of Economic Adviser, is hereby rescinded without prejudice to actions taken under such delegations of authority prior to the date hereof.

Dated: September 3, 1958.

WENDELL B. BARNES,
Administrator.

[F. R. Doc. 58-8818; Filed, Oct. 23, 1958;
8:52 a. m.][Delegation of Authority 20 (Revision 3)
Amdt. 1]DEPUTY ADMINISTRATOR FOR PROCUREMENT
AND TECHNICAL ASSISTANCEDELEGATION OF AUTHORITY RELATING TO
PROCUREMENT AND TECHNICAL ASSISTANCE

Delegation of Authority No. 20 (Revision 3) (23 F. R. 1819) is hereby amended by deleting subparagraph I. A. 2.

Dated: September 3, 1958.

WENDELL B. BARNES,
Administrator.

[F. R. Doc. 58-8819; Filed, Oct. 23, 1958;
8:52 a. m.]

[Delegation of Authority 30-VII-8]

MANAGER, DISASTER FIELD OFFICE,
JOLIET, ILL.DELEGATION OF AUTHORITY RELATING TO
FINANCIAL ASSISTANCE FUNCTIONS

Notice is hereby given that this delegation (22 F. R. 6449) is rescinded in its entirety.

Dated: October 2, 1958.

WILLIAM H. KELLEY,
Regional Director.

[F. R. Doc. 58-8820; Filed, Oct. 23, 1958;
8:52 a. m.]

[Declaration of Disaster Area 205]

CALIFORNIA

DECLARATION OF DISASTER AREA

Whereas, it has been reported that during the month of October 1958, because of the effects of certain disasters, damage resulted to residences and business property located in certain areas in the State of California;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7 (b) of the Small Business Act may be received and considered by the Office below indicated from persons or firms whose property situated in the following County, (including any areas adjacent to said County) suffered damage or other de-

struction as a result of the catastrophe hereinafter referred to:

County: Los Angeles (Forest fire occurring on or about October 2, 1958).

Office: Small Business Administration Regional Office, Ohrbach Building, Room 1101, 312 West Fifth Street, Los Angeles 13, Calif.

2. No special field offices will be established at this time.

3. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to April 30, 1959.

Dated: October 3, 1958.

WENDELL B. BARNES,
Administrator.

[F. R. Doc. 58-8821; Filed, Oct. 23, 1958;
8:52 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 24NY-4117]

ARLISS PLASTICS CORP.

ORDER PERMANENTLY SUSPENDING
EXEMPTION

OCTOBER 17, 1958.

Arlliss Plastics Corporation having filed with the Commission on October 12, 1955, a notification and an offering circular, and amendments thereto, for the purpose of obtaining an exemption from the registration provisions of the Securities Act of 1933 pursuant to section 3 (b) thereof and Regulation A thereunder, with respect to a public offering of 150,000 shares of its 10¢ par value common stock at \$2.00 per share;

The Commission having by order dated June 26, 1957, pursuant to Rule 223 (a) of Regulation A, temporarily suspended the aforesaid exemption;

The Commission having ordered a hearing to determine whether to vacate the order of temporary suspension or to enter an order permanently suspending the exemption;

Hearings having been held after appropriate notice, and a recommended decision by the hearing examiner having been waived;

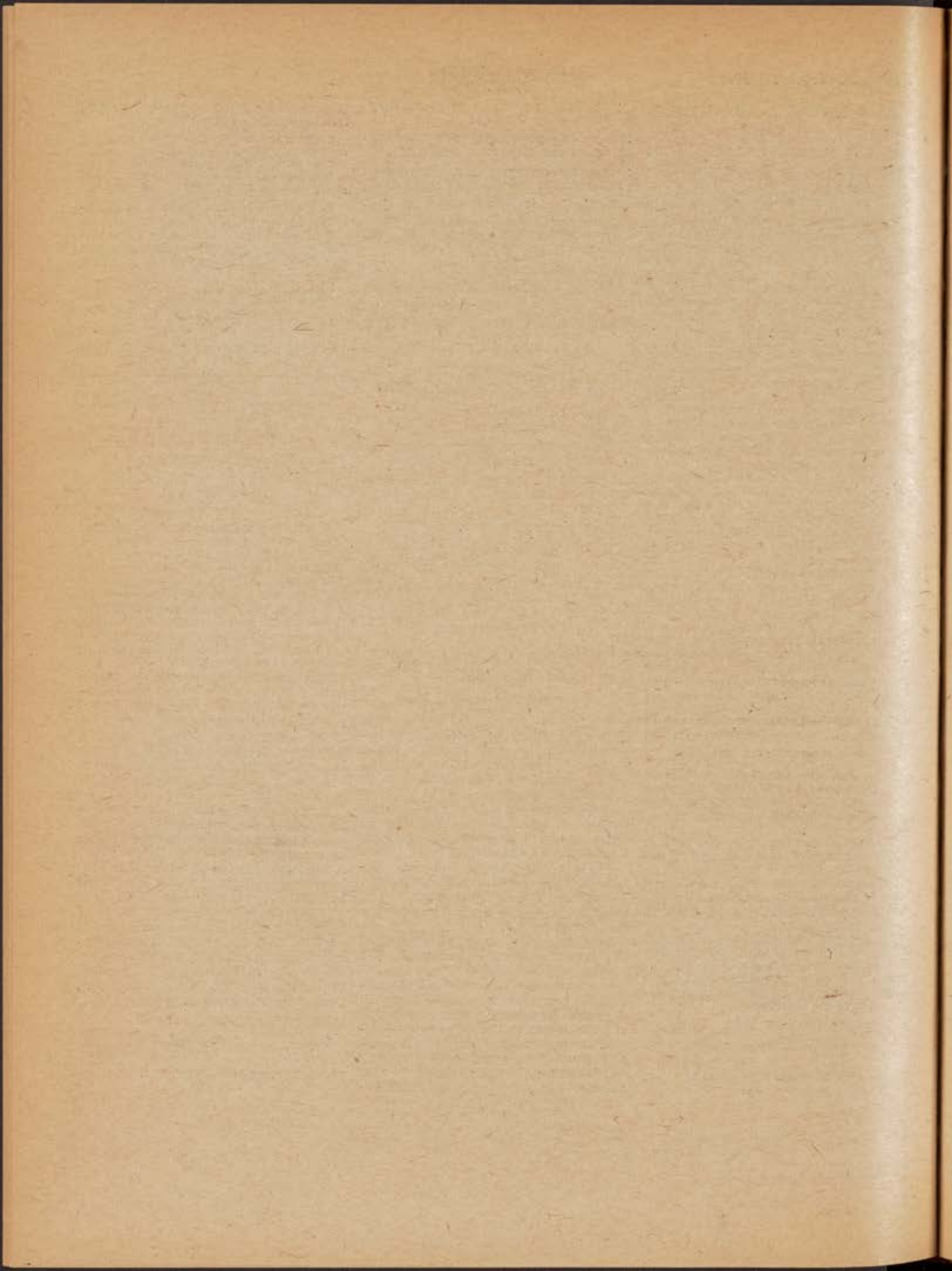
The Commission having this day issued its findings and opinion; on the basis of said findings and opinion

It is ordered, Pursuant to Rule 223 of Regulation A under the Securities Act of 1933, that the exemption from registration with respect to the above public offering by Arlliss Plastics Corporation of its common stock be, and it hereby is, permanently suspended.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 58-8826; Filed, Oct. 23, 1958;
8:54 a. m.]



PART II

THE NATIONAL ARCHIVES
LITTERA SCRIPTA MANET
1934
OF THE UNITED STATES

FEDERAL REGISTER

VOLUME 23 NUMBER 209

Washington, Friday, October 24, 1958

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 990]

[Docket No. AO-302]

HANDLING OF MILK IN SOUTHEASTERN NEW ENGLAND MARKETING AREA

DECISION WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND ORDER

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Providence, Rhode Island, on February 11 through March 14, 1958, pursuant to notice thereof issued on January 23, 1958 (23 F. R. 499), upon a proposed marketing agreement and order regulating the handling of milk in the Southeastern New England marketing area.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on August 15, 1958 (23 F. R. 6465), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision, containing notice of opportunity to file written exceptions thereto.

The material issues of record relate to:

1. Whether the handling of milk produced for sale in the proposed marketing area is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products;
2. Whether marketing conditions show the need for the issuance of a milk marketing agreement or order which will tend to effectuate the policy of the Act; and
3. If an order is issued, what its provisions should be with respect to:
 - (a) The scope of regulation;
 - (b) The classification and allocation of milk;
 - (c) The determination and level of class prices;
 - (d) Distribution of proceeds to producers; and
 - (e) Administrative provisions.

While the initial proposal which resulted in the call of this hearing would have resulted in a considerable extension of the Fall River order and revision of its terms and provisions, it is apparent for reasons later set forth that a much broader area of regulation, as set forth in supplemental proposals is necessary and it is concluded that consideration should be directed to an entirely new regulation rather than revision of the present order.

Findings and conclusions—1. *Character of commerce.* The handling of milk in the Southeastern New England marketing area is in the current of interstate commerce and directly burdens, obstructs, or affects the handling of milk and its products.

The Southeastern New England market is an interstate market encompassing all of the State of Rhode Island and a substantial area in Southeastern Massachusetts. Within this market there is a substantial and continuing interstate commerce, both in the procurement of milk and in the sale of fluid milk and its products.

Milk produced on dairy farms in the States of Connecticut and Massachusetts moves daily in interstate commerce to processing and bottling plants within the State of Rhode Island where it is commingled with milk received from local Rhode Island dairy farmers and from dairy farmers and/or plants located in the States of New York, New Hampshire, Maine and Vermont. Such milk is distributed daily on wholesale and retail routes in Rhode Island and Massachusetts in competition with milk from Boston pool plants which milk is produced in the States of New York, New Hampshire, Vermont, Maine and Massachusetts and in competition with milk from Fall River and New Bedford, Massachusetts, which originates from dairy farms in Rhode Island, Massachusetts, New York and Vermont.

During the marketing year ending June 30, 1957, Rhode Island dealers received only 31.4 percent of their total milk requirements from producers within the State; 14.2 percent was supplied by producers in the State of Massachusetts and 29.2 percent by producers in the State of Connecticut. The remaining

25.2 percent was supplied by dairy farmers and/or plants in other New England States and the State of New York.

Of the 202 Rhode Island licensed dealers, 66 distribute in both Rhode Island and Massachusetts. Approximately one-fourth of the total reported Class I sales of Rhode Island licensed dealers during the 1957 marketing year moved from Rhode Island across State lines for distribution in other States.

One substantial dealer who would be a regulated handler under the proposed order has processing and distributing plants which are located in Providence, Rhode Island, East Bridgewater and Fall River, Massachusetts. This same dealer has a large number of upcountry receiving plants in the States of New York, Vermont, New Hampshire and Maine and a number of distributing plants dispersed throughout the New England area. Distribution from the three local plants is interchangeable on routes covering the entire area herein under consideration. These plants are supplied by local dairy farmers in Rhode Island, Connecticut and Massachusetts and by various receiving and/or distributing plants, many of which are regulated under the other New England Federal orders.

Another handler with distribution operations extending over a major part of the proposed area in Rhode Island and Massachusetts, also has a substantial business in the several federally regulated markets in Massachusetts as well as in other unregulated markets in New England. Milk processed in his Providence plant is received interchangeably from local dairy farmers, dairy farmers in upcountry areas and from his Boston plant regulated under Order No. 4.

Official statistics of the Fall River market administrator show that during representative months of 1957 approximately 40 percent of the total receipts of regulated handlers originated within the State of Massachusetts, 30 percent within the State of Rhode Island and 30 percent within the States of Vermont, New Hampshire, and New York. Of the 25 handlers subject to the Fall River order in December 1957, 16 were licensed Rhode Island dealers, 8 of whom distributed in the Newport, Rhode Island area and in the local Massachusetts cities

and towns. At least two of the larger Fall River handlers receive only limited quantities of local milk and secure the greater portion of their supply from Vermont.

In at least two instances Fall River handlers serve the Fall River market and the New Bedford market from their Fall River plants. Approximately one-third of the total Class I disposition in the New Bedford area is by Fall River handlers. A number of local New Bedford handlers supplement their local milk supply with out-of-State milk, and these New Bedford handlers distribute milk not only locally, but also in Rhode Island and in Plymouth and Barnstable Counties, Massachusetts.

The Cape Cod area (Barnstable County) and parts of Plymouth and Bristol Counties in Massachusetts are served by Boston and Fall River handlers and by local, New Bedford and Rhode Island dealers. A large part of the milk disposed of in this area originates in the States of New York, Vermont and New Hampshire.

More than one-third of the fluid requirements for the Southeastern New England area originates from sources outside the States of Massachusetts, Connecticut and Rhode Island. Much of the upcountry milk is assembled and received at country plants in Vermont and New Hampshire and is then transported to the Southeastern market for processing and distribution. Additional quantities are handled by bulk farm tank pick-up and moved directly from farms in northern New England to plants in the local market.

Milk in excess of fluid needs is separated into the cream and skim components and manufactured into products which compete directly with manufactured products on the national market. Since the market is an open cream market, cream from distant States moves into and out of the area freely in competition with cream from local sources.

From the foregoing it is concluded that all of the milk in the Southeastern New England market does move in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk and its products.

2. *Need for an order.* Market conditions in the State of Rhode Island and the Southeastern Massachusetts Counties of Bristol, Plymouth and Barnstable justify the issuance of a marketing agreement and order.

In earlier years, the area herein under consideration was comprised of a number of relatively independent and segregated local milk markets. The handling of milk in the City of Fall River and the adjacent towns of Somerset, Massachusetts and Tiverton, Rhode Island has been regulated under Federal Order No. 47 since May 1, 1936.

The particular relationship which existed between the Fall River and New Bedford markets at the time of the original promulgation of this order required a provision which permitted handlers serving both markets from the same

plant to carry their New Bedford supply outside of the scope of regulation. For many years the order operated successfully and effectively in maintaining orderly marketing. However, in recent years fundamental changes in methods of handling and distributing milk, together with substantial population growth and increased milk supplies have resulted in a substantial extension of the distribution area to the point that the present marketing area represents only a small segment of the actual market of regulated handlers. The provisions originally intended to accommodate a specialized situation between Fall River and New Bedford have impeded to a degree the regulation under the Fall River order.

The New Bedford market, which in earlier years operated as a highly preferential and self contained market under State regulation was disrupted in early 1957 when a Rhode Island handler opened several stores in the New Bedford market specializing in gallon jug operations at lower than prevailing prices. Following the introduction of the gallon jug operation the two Fall River-New Bedford handlers, who for many years had operated single plants with separate producer lists designated for the two markets, elected to subject their entire operations to regulation under the Fall River order to circumvent the higher pricing under the State regulation in New Bedford. All other New Bedford handlers immediately subjected themselves to regulation under the Fall River order. This situation prevailed through the month of June after which the price under the State order was aligned with the Fall River price.

The situation in both Fall River and New Bedford has continued to deteriorate as handlers, seeking to avail themselves of milk supplies at the most advantageous price, have tended to look to upcountry unregulated supplies which are generally available at a price comparable with the Boston blended price, which on a year-round basis reflects approximately 55 percent utilization in Class I. As a result local producers have had difficulties in maintaining regular outlets for their production. This condition is most serious in the Fall River market where the several associations of producers whose members are the predominant suppliers of the market have a substantial volume of milk which is not accepted by handlers. Much of this milk is sold at manufacturing milk prices even though the local milk supply is inadequate to meet market demands.

Producers who are members of New Bedford Milk Producers Association, the principal supplier of local handlers in the New Bedford area, are in the same situation as that of regular Fall River producers. The same pressures which have led to a loss of market for many local Fall River producers are applicable to the New Bedford area. Pending consideration of Federal regulation has no doubt forestalled substantial supply changes by local handlers thus far. However, it is likely that if no action is

taken handlers will seek lower priced unregulated milk supplies.

The situation in the Rhode Island part of the market is substantially similar to that in the Fall River-New Bedford area. Early in 1951 the association representing a large segment of the registered Rhode Island producers requested a hearing to consider a Federal order for that market because of the then existent market disorder. On the basis of the facts presented at that hearing it was recommended that an order be issued. However, following that decision the association negotiated a settlement with local handlers which minimized the effect of the disorder and accordingly the association asked that the order not be issued.

The increase in available milk supplies generally and the fact that milk is readily available from upcountry sources at prices approximating the Boston blend has provided a strong incentive for handlers to drop local producers in favor of cheaper sources of supply.

Less than one-third of the fluid requirements of Rhode Island dealers are supplied by Rhode Island dairy farmers. An additional forty-five percent is supplied by dairy farmers located in nearby Massachusetts and Connecticut and the remainder is secured from other sources, primarily from the States of Vermont and New York. Several of the larger handlers in the market customarily have secured a lesser proportion of their necessary supplies from local producers than have other handlers. The buying advantage that these handlers have had on their purchases of outside milk has prompted other handlers to drop local producers in favor of sources of supply at upcountry points also.

While the record does not reveal the specific prices at which all of such milk has been purchased it does show that one of the larger handlers in the market secured milk in the month of December 1957 from his unregulated plants at Benson and Whiting, Vermont at a cost of \$5.384 which compares with the local city plant Class I price at Providence of \$7.00. Even when handling and transportation are considered it is evident that the buying advantage in using unregulated milk deters the use of local milk.

Relatively large quantities of local producer milk were dropped during the latter months of 1957 and early 1958; in some cases entire pickup routes were dropped at one time. The burden of handling the homeless milk in the market has rested with the local producer cooperatives whose members are involved.

The Rhode Island Milk Control Board in the latter part of 1957 initiated an allocation program which was intended to assure a market for local producers and to equalize the percentage utilization of local and outside milk as among handlers. Because of the interstate character of the market handler participation was necessarily voluntary and, while the program has resulted in some redistribution of producers among participating handlers, it has not been effective

in restoring market stability. Unregulated, lower-priced milk continues to move into the market in even greater quantities than before the allocation scheme was initiated.

Registered Rhode Island producers have enjoyed a preferential market over an extended period of years. The allocation program and the procedure employed by the responsible officials of the State in issuing permits for importation of nonregistered milk have tended to maintain such preferential market to the detriment of other dairy farmers whose production is an essential part of the market supply.

Proponents presented an analysis of the annual statistics of the Rhode Island Milk Control Board which purported to show that returns to registered producers reflected all the Class II utilization for the market. While the form of the annual statistics does not permit the precise analysis made by proponents, such statistics support this general position. Local producers, however, do not carry an unreasonable volume of the necessary market surplus. The overall Class II utilization for the market is only 5.8 percent of total market utilization and less than 10 percent of receipts from registered producers which, from experience in other federally regulated fluid markets, is substantially less than the necessary reserve which a market such as Rhode Island must carry to assure a continuing adequate supply to meet daily and seasonal fluctuations in supply and demand. Hence, the market relies primarily on upcountry unregulated supplies and surrounding Federal order markets to provide the necessary reserves. Since, as previously stated, non-registered milk is purchased at prices closely related to the Boston blended price, which reflects an average Class I utilization of about 55 percent, the crediting of registered producers with the total Class II utilization tends to enhance the overall buying advantage of importing handlers.

A market structure which grants a preferential price to registered Rhode Island producers cannot provide a stable market for such producers over any extended period while handlers have the opportunity to gain a procurement advantage through the use of lower priced milk from upcountry sources. The State, as a practical matter, cannot effectively regulate milk which moves across State lines, and while local dealers may voluntarily reduce imports of outside milk temporarily to gain support from local producers, it is inevitable that the incentives for using unregulated milk will result in a loss of market for local producers.

The Southeastern New England market is a deficit market and must rely on sources of supply in northern New England and New York to supplement the local supply. Recent developments in bulk tank cooling and transportation facilities have contributed to efficiencies which permit greater flexibility of handler operations at greater distances from the consumption center in Southeastern New England. Handlers serving this market, because of the high demand for fluid milk locally and the existing op-

portunity to procure fluid milk at prices related to the Boston blend price in the country for fluid use in the marketing area, have a material competitive advantage over those handlers buying on a classified use plan in this and other Federal order markets in the region due to the difference in their product cost and the Class I price. Premiums over the blend price which may be offered by local handlers making "upcountry" purchases have a detrimental effect upon adjacent markets by inducing producers to leave cooperative associations and markets with which they have maintained association for a number of years to deliver to handlers for this market. This situation has resulted in uneconomic short-time shifts in producers between markets and has had an adverse effect upon not only the Southeastern New England market but also the adjacent markets in New England.

The marketing situation as it now exists constitutes a serious and continuing threat to the stable and orderly marketing of milk and to the maintenance of an adequate supply of pure and wholesome milk for the Southeastern New England marketing area.

The issuance of a marketing agreement and order for the Southeastern New England marketing area will contribute to greater stability of the fluid milk market and will tend to effectuate the declared policy of the act. The adoption of a classified pricing plan based on audited utilization of handlers will provide a uniform system of pricing throughout the area and assure a fair and equitable return to all producers.

Public hearing procedure as required by the Agricultural Marketing Agreement Act will assure full opportunity for representation of all interested parties in presenting evidence relating to marketing conditions and allow participation in the determination of prices for milk in the Southeastern New England marketing area.

3. Order provisions—(a) Scope of regulation. The purpose of Federal regulation is to assure an adequate supply of pure and wholesome milk for the fluid market by promoting and maintaining orderly marketing of milk. This purpose is achieved through regulation of those handlers who engage primarily in the handling of milk for sale as fluid milk in the local market. Such regulation requires handlers to account for their milk receipts on a classified use basis, establishes minimum class prices which handlers must pay for such milk and provides a mechanism for the equitable distribution of those proceeds among all producers. The scope of such regulation may be specified by providing appropriate definitions of various terms including "marketing area", "pool plant", "dairy farmer for other markets", "producer", "handler", "producer-handler", "buyer-handler", "other source milk" and "exempt milk".

Marketing area. The marketing area as herein proposed includes all of the State of Rhode Island, (excepting Block Island) and all of the Massachusetts Counties of Bristol, Barnstable and Plymouth (excepting the towns of Hingham and Hull) together with all piers,

docks and wharves connected therewith and including all territory within such boundaries which is occupied by Government (municipal, State or Federal) installations, institutions or other establishments.

The area as herein proposed is slightly in excess of 2500 square miles in size and according to the 1950 census has a total population of nearly 1,400,000 persons of which nearly 800,000 are in the State of Rhode Island and 600,000 in Massachusetts. Population estimates introduced in the record of the hearing indicate an overall population growth in this area from 1950 until 1956 of approximately 7 percent. These figures do not include the summer tourist population in the Cape Cod and other shore areas in the marketing area which during the peak months of July and August is substantial.

The proposed marketing area includes four standard metropolitan areas as recognized by the Bureau of Census. Three of these areas, Providence, Fall River and New Bedford, constitute one contiguous area of relatively high density of population in which there is a very substantial overlapping of handlers' routes. The fourth area, the city of Brockton lies some 30 miles to the northeast in Bristol County.

The entire area as herein proposed is generally served by handlers who would be fully regulated under the terms and provisions of the proposed order. The largest handler involved operates in virtually every town in the area. While his distribution in Rhode Island is primarily from his Providence plant and his distribution in Fall River and New Bedford primarily from his Fall River plant, the remainder of the area is served interchangeably from his Providence, Fall River and East Bridgewater plants. Another substantial handler serves much of the area, including Barnstable County, from his Providence plant. Other handlers serve substantially the entire area on direct distribution routes, through stores, or as suppliers of other handlers.

The State of Rhode Island is an area of high population concentration generally served by handlers located in and around the City of Providence and by local handlers. While the western tier of towns in Providence, Kent and Washington Counties are more rural in character than the remainder of the State, this area, nevertheless, is extensively served either directly, or through sub-dealers, by handlers who would be fully regulated by virtue of their business in the Providence area. The town of Westerly, in Washington County is a specific exception in that it has a relatively high population concentration more typical of the eastern part of the State.

One handler whose business in the marketing area is largely confined to Westerly proposed that this town be excluded from the area, on the grounds that it is more closely associated with the State of Connecticut and should be included under any order promulgated for the State of Connecticut rather than under this proposed order. The record fails to provide a basis for appraising the relative proportions of the total busi-

ness done in Westerly by that handler and by other handlers who would be regulated by virtue of their business in other parts of the proposed area. Unless Westerly is included, handlers now serving this town, who would be fully regulated under the order, might well find themselves at a substantial disadvantage in competing with unregulated handlers operating in Westerly.

The handler in question contended that the volume of his business in Westerly was insufficient to bring him under regulation. Under such circumstances, he would be accorded the same treatment as other handlers operating under similar circumstances. If an order should be promulgated for Connecticut and this handler became a fully regulated handler under that order, the terms and provisions of this order are such that he would not be adversely affected by the inclusion of Westerly in this marketing area.

Much of Newport County, Rhode Island is presently served by both Rhode Island handlers and Massachusetts handlers primarily from the Fall River market. The town of Tiverton, Rhode Island, is now a part of the Fall River marketing area under Order No. 47 which area is included in this proposed marketing area.

Included in the Rhode Island portion of the marketing area are the Naval base in Newport County, the Naval Air Station at Quonset Point and the Seabee Station at Davisville, the latter two being in Kent County. Milk is supplied to these installations on a contract bid basis and in recent years the bid prices of successful bidders have been closely related to surplus milk values. The disposition of milk delivered under these contracts has tended to be a serious disruptive factor to orderly marketing in the surrounding area.

The Fall River-New Bedford area represents an extensive contiguous area in which there is general overlapping of route sales by handlers in the two markets. Two of the larger handlers serve both of these markets from their Fall River plants and until early 1957 they maintained separate producer lists under the Fall River order. At that time the New Bedford market was seriously disrupted and for a short time, in an effort to preserve their market, New Bedford handlers placed themselves under regulation by the Fall River order. Subsequently additional Fall River handlers entered the New Bedford market. Now the maintenance of separate producer lists is not observed and the two markets are indistinguishable.

The area of Bristol County, Massachusetts, to the north of Fall River is served by Rhode Island, Fall River, New Bedford, Brockton (Plymouth County) and local dealers. This portion of the proposed marketing area represents the greatest area of overlapping sales by all handlers who would be regulated under the proposed order.

Many of the handlers who serve this area and/or the Fall River-New Bedford area also have substantial sales in Plymouth and Barnstable Counties. Already mentioned are the two handlers who serve virtually throughout the proposed area. In addition one handler located in

Seekonk (Bristol County) operates three retail stores in Brockton (Plymouth County), one in Wareham (Plymouth County) and one in Hyannis (Barnstable County). Another handler with a plant at Woonsocket, Rhode Island, operates a number of dairy stores in Fall River, New Bedford, Seekonk, Attleboro, Somerset, and Brockton and still another Fall River handler has wide distribution, either directly on routes or through plant stores or as a supplier of other handlers, over much of the proposed marketing area. At least two New Bedford handlers have extensive distribution into the southern portion of Plymouth County and in Barnstable County.

Much of the Plymouth-Barnstable County area and particularly Barnstable County is a resort area and is served not only by Rhode Island and Fall River-New Bedford handlers but also by local handlers and by Boston handlers regulated under Order No. 4. It is not possible on the basis of the record to ascertain whether, in fact, Rhode Island and Bristol County handlers or Boston handlers are the primary distributors in this area. However, unless this area is included as a part of the marketing area both handlers who would be regulated by virtue of their business in other parts of the area and regulated Boston handlers would be seriously disadvantaged by competition from unregulated milk in this area. Moreover, regular producers, who represent the most economical source of supply for the area, would lose their market in favor of unregulated supplies. The inclusion of the area in the marketing area was supported by the Boston handlers now distributing there.

Otis Air Force Base located in Barnstable County, represents a substantial outlet for fluid milk which is served on a bid contract basis. While handlers who would be regulated under the proposed order have generally held the contract for this installation the disposition of milk delivered under this contract has been a serious disruptive factor to orderly marketing in the surrounding area substantially in the same manner as the Naval base and other installations in the Rhode Island area.

The towns of Hingham and Hull in Plymouth County are specifically excluded from the proposed area. These two towns are adjacent to the Boston marketing area and are virtually exclusively served by Boston handlers and by local handlers who would be regulated by virtue of their business elsewhere. Their location is such that it is extremely unlikely that unregulated milk would become a serious competitive factor. However, if regulation later appears desirable these towns probably should more logically be considered for addition to the Boston marketing area.

The marketing area as herein proposed is one in which the health requirements as they apply to the production, processing and handling of milk for fluid consumption are generally similar and milk freely moves in distribution channels from all parts of the area. While there are technical differences in the application of health regulation, particularly as they apply to the State of Rhode Island, such regulation applies

only to local dairy farmers who qualify as Rhode Island registered producers. Rhode Island dealers with insufficient milk from such producers freely import milk from surrounding areas to meet their total requirements and such milk is commingled with receipts from registered producers and disposed of both within and outside the State.

It is intended that the sales of fluid milk from piers, docks and wharves and to crafts moored thereat be included as sales in the marketing area. It is also intended that the area include all of the territory occupied by Government reservations, institutions or other such establishments whether municipal, State or Federal, if they lie within the limits of the area as defined. The quality requirements for milk for such outlets are similar to those for milk sold in other parts of the marketing area. These installations, by location, represent logical areas of distribution for handlers who would become regulated under the proposed order or for regulated handlers under adjacent Federal orders. Unless they are included, regulated handlers will be placed at a serious disadvantage in competing with unregulated handlers for such sales. The inclusion of these areas will assure as between handlers uniform minimum cost of milk received from producers.

The marketing area as herein defined comprises a contiguous, and for the most part a heavily populated territory served by the same handlers. Such area is in reality a single milk market which constitutes a practical unit for the proposed regulation.

A representative from an association of producers operating in Dukes County appeared at the hearing and suggested that this county be included in the marketing area, primarily because of his concern over the effect of regulation on the disposition of surplus milk in the county. The hearing notice was not sufficiently broad to permit consideration of the inclusion of this county. However, the association has no direct fluid disposition outside the county and in the past it has been able to realize no more than the surplus price for milk in excess of its fluid requirements. The application of the order provisions would not appear to alter this situation. If after experience with the operation of the order it becomes desirable to consider the addition of Dukes County to the marketing area this could be done through an amendment hearing.

One handler whose plant is located in Franklin, Massachusetts, (Norfolk County), and who has substantial distribution in Norfolk County, outside the limits of the Boston marketing area, but who would become a fully regulated handler under this order, argued that he would be forced to compete with unregulated handlers in his Norfolk County disposition. Handlers presently regulated under the Boston order have a substantial business in Norfolk County and most of the remaining competition presently comes from small local dealers who under the existing local market structure would likely have no cost advantage in the procurement of their milk. The in-

clusion of any part of Norfolk County was not noticed in the call of the hearing. If later developments indicate the need of Federal regulation in this area consideration of this can be given in an amendment hearing on this order or on the Boston order.

Certain parties excepted to the conclusion of the Deputy Administrator that an order should be promulgated for the Southeastern New England market. Such excepters contended that the area in question should more logically be added to the Boston marketing area or alternatively that the terms and provisions of a separate order should be substantially those contained in Order No. 4 regulating the handlers of milk in the Boston market. Excepters, however, recognized that the addition of this area to the Boston marketing area was not noticed in the call of the hearing.

For reasons previously stated it is concluded that a separate order for the Southeastern New England market is appropriate and the terms and provisions thereof, as later set forth, are framed in light of the local conditions as set forth in the hearing record. Such terms and provisions also give recognition to and are compatible with the terms and provisions of adjacent Federal orders and will promote orderly marketing in the area and assure an adequate supply of milk for the local market.

Milk to be priced. The plants from which milk is distributed into the Southeastern New England marketing area dispose of the major portion of their milk receipts in the form of fluid milk products for fluid consumption. Milk intended for fluid consumption in the area is required to be produced in compliance with inspection requirements of the duly constituted health authorities having jurisdiction in the area. The minimum class prices of the order should apply to that milk which is received regularly from dairy farmers at plants at which milk is pasteurized and packaged for fluid distribution on retail or wholesale routes (including routes of vendors) or through plant stores in the marketing area, or which is received at plants which are regular and substantial suppliers of milk to such pasteurizing, packaging or distributing plants.

Under the terms of the order as herein proposed, milk may be disposed of for fluid consumption in the marketing area from plants not meeting the criteria of regular and normal supply sources for the market. It is necessary therefore to establish definitive standards of performance for use in determining which plants and what milk constitute the regular and normal sources of supply and thereby become fully subject to regulation. Such standards appear in the order and apply uniformly to all plants wherever located. Any plant regardless of location may be brought under regulation by the order or it may remain outside the scope of regulation dependent on the mode of operation elected by the operator of each plant. The determination and decision as to how a plant shall be operated remains vested in the plant operator.

As indicated elsewhere in this decision, marketwide pooling of producer returns

is considered essential to the orderly functioning of this market. Since a marketwide pool results in payments to producers which reflect the average utilization for the market, individual handlers whose proportion of Class I utilization is less than the average for the market receive payments from the producer-settlement fund while handlers who have higher than average utilization in Class I make payments into the fund. The rate of payment to producers will be uniform among all handlers.

Under certain circumstances, operators of plants engaged primarily in manufacture or in supplying other fluid markets on a spot basis have an incentive to come under regulation for the purpose of receiving equalization payments from the producer-settlement fund in order that prices paid to their farmers will be comparable with the prices received by regular producers. Such plant operators normally would elect to join the pool when they would draw equalization payments from the fund and would withdraw from the pool when their plant utilization was above the market average and they were required to make payment to the fund. The distribution of equalization payments to such a plant would reduce the blended price with subsequent adverse effect upon the regular milk supply of the market. The maintenance of an adequate supply of pure and wholesome milk for the market necessitates formation of specific rules on pooling qualification and the distribution of returns under the order to prevent circumvention of the purpose of the order.

The extra value or differential by which the Class I price exceeds the price of milk for manufacturing uses is intended to provide the necessary incentive to producers to attain an adequate supply of pure and wholesome milk for the market. Milk in excess of Class I needs cannot be expected to return more than a manufacturing milk value since this is the only outlet remaining after fluid needs are satisfied.

Performance standards should be drawn under a marketwide pool so that the Class I sales of the Southeastern New England market will be shared among those producers who are an essential and regular part of the supply for the area. To confine regulation, the performance standards should be sufficiently flexible to permit intermittent shipments of milk by plants whose primary business may be in other markets without requiring full regulation of such plants. Under the provisions of this order supplies which are a regular and essential part of the Southeastern New England market as well as intermittent supplies will be accommodated.

The several plant definitions included in the order provide the basis for determining those plants which will be accorded pooling status and the dairy farmers regularly delivering thereto will be entitled to receive the minimum blended price as determined in the distribution of proceeds resulting from the pool.

A "receiving plant" is defined as a plant at which milk is received directly

from dairy farmers as distinguished from other kinds of specialized plants which do not receive milk directly from the farm and would not be participating in the pool. It is intended that the operator of the receiving plant shall be the responsible handler for accounting purposes and for making payments to dairy farmers. In order that the market administrator may have ready access to the necessary records and assurance that the milk of individual dairy farmers is positively identified and properly accounted for, a condition of qualification for receiving plant status is that such plant shall contain facilities for receiving, and handling the milk, washing and sterilizing cans, tanks, and equipment. The plant shall also have facilities for determining the weight and butterfat test of milk received and shall maintain the necessary records of the individual farmer's deliveries.

Only receiving plants which meet specified performance standards designed to establish a substantial association with the market, should be accorded pool plant status. Such association may be established either by direct distribution of Class I milk in the marketing area (i. e. a distributing plant) or by supplying such a distributing plant (i. e. a supply plant).

Any receiving plant which distributes at least 10 percent of its total receipts of milk from dairy farmers as Class I milk on routes within the marketing area and disposes of not less than 50 percent of such receipts as Class I milk may qualify as a pool distributing plant.

A plant with less than 50 percent of its producer receipts in Class I sales should not be considered as primarily in the business of fluid distribution. A plant with less than 10 percent of its business in the marketing area cannot be considered as essentially associated with the Southeastern New England fluid market since it does only a minor part of its business in this market. Full regulation would not be necessary in such situation and might place the plant at a competitive disadvantage in supplying the market with which it is normally associated.

While the Southeastern New England market is in a large measure supplied by local dairy farmers whose milk is regularly received at distributing plants serving the area such receipts are not sufficient to meet market demands. A substantial quantity of milk is regularly received by certain distributing handlers from upcountry supply plants. Because of the recreational opportunities existing in the area the greatest demand for fluid milk occurs during the period July through September. These months, together with the months of October and November—normally the months of shortest production in the area—should constitute the qualifying months for continuous pooling. A plant shipping at least 30 percent of its total receipts of milk delivered directly from dairy farmers during any of these months to a distribution plant which disposes of at least 10 percent of its total receipts of fluid milk products as Class I milk in the marketing area and not less than 50 percent of such receipts as Class I milk both in-

side and outside the marketing area should be a pool supply plant during such month.

It cannot be ascertained on the basis of the hearing record what supply plants and how many such plants might eventually associate with the Southeastern New England pool. It is concluded, however, that a 30 percent shipping requirement constitutes a reasonable requirement and is consistent with such requirements under the other New England orders.

Proponents proposed a 50 percent minimum shipping requirement for supply plants, contending that a lesser shipping requirement might attract more milk to the market than is needed and unduly dilute returns to local producers. While it is not intended that shipping requirements be so low as to attract milk primarily associated with manufacturing outlets, too high a shipping requirement will tend to deter an adequate market supply. It is intended that the market shall carry a sufficient reserve supply throughout the year rather than depend on the adjacent Federal order markets for such reserve. Because of the substantial percentage of market needs which now comes from local producers it is likely that a 50 percent shipping requirement would result in uneconomic movements of milk, solely for the purpose of meeting such requirements. Milk not needed for fluid uses is disposed of in manufacturing outlets. Since most of the manufacturing facilities in the New England States are in the upcountry area, milk in excess of fluid requirements would normally not move to the marketing area.

During the months of December through June supplies of milk received at plants located in or near the marketing area may be sufficient to supply the greater part of the requirements for Class I milk, in which case it would be more economical to leave the more distant milk in the country for manufacturing and absorb the nearby supplies first in Class I use. Performance standards should not force milk to be transported to distributing plants in the months of high seasonal production merely for the purpose of maintaining eligibility for pooling. It is provided therefore that any supply plant which meets the pooling requirements during each of the months of July through November shall be a pool plant in each of the succeeding months of December through June unless the handlers' written request for nonpool status for the entire seven-month period is received by the market administrator prior to the first day of such period.

Because of the limited manufacturing facilities available in the marketing area it is likely that much of the burden of handling local milk in excess of fluid needs will fall upon the several cooperatives with membership among the local producers. The intent of regulation will not be accomplished unless such milk is permitted continuing pool status. To implement this requirement, pool plant status is accorded any plant located in the marketing area and operated by a cooperative association.

Any plant which was not a pool plant in each of the months of July through

November should not be permitted pool status in the succeeding months of December through June regardless of its function during such latter period unless such failure to attain pool plant status in the months of July through November was due to the fact that the plant was operated as the plant of a producer-handler or was a pool plant under another order.

The months of July through November, as previously stated, are the months when milk is most needed in the market, and in large measure in surrounding Federal order markets. Unless some restrictions are provided it is likely that plants which have no association with specific markets, but market milk on an opportunity basis, may seek to join the Southeastern pool, either as distributing or supply plants, during those months when alternative outlets are at a minimum, for the purpose of sharing in the Class I utilization of this market. The plant of a producer-handler, however, would have established its association with the market, and if the operator thereof should elect to change its status and share its Class I utilization, the pool undoubtedly would not be disadvantaged from such a change of status.

It would be improper to deny pool status to any plant which met all of the requirements for pool status under this order during the qualifying months of July through November but was not a pool plant during such period solely because it was a pool plant under another order.

Since the months of July through November are established as the qualifying months for pooling status during the months of December through June and it is not feasible to invoke the order provisions on a retroactive basis, it is necessary that some provision be made to accommodate the situation during the months through June 1959. It is expected that the provisions of the order, other than pricing and payment, will be made effective in advance of the pricing and payment provisions to permit handlers to become acquainted with the operation of the order and the types of records and reports to be required. It is concluded that should the reporting provisions be made effective prior to December 1, 1958, the period from the effective date thereof through November 30, 1958, should be the period for establishing pooling status and any plant meeting the pooling requirements during such period shall be considered to have met the conditions otherwise applying to the July-November period. Should the reporting provisions be made effective subsequent to November 30, the first month or portion thereof in which such provisions are effective should constitute the qualifying period. Since, as previously stated, the months of July through November are the months of greatest demand and/or shortest production it is likely that there will be somewhat less need for shipments from country plants during the remaining winter months than during the July-November period. However, the situation in December and January is not substantially different from the situation in October and November. It is concluded therefore that should the

reporting provisions be made effective subsequent to November 30, a shipment of 25 percent in lieu of 30 percent specified for the months of July through November should be provided and any plant meeting the pooling requirements during the first month or portion thereof in which the reporting provisions are effective shall be considered to have met the conditions otherwise applying to the July-November period.

The need for a modification of the pooling requirement in light of the prospective effective date of the order was generally recognized by interested parties in their exceptions and the modifications herein provided are generally consistent with the suggestions of excepters.

A number of exceptions were filed to the proposed 30 percent shipping requirement for pooling status. Some parties contended that a 30 percent requirement was too low, while others contended that it was excessive, and others proposed modifications in its application. As previously indicated, it cannot be ascertained at this time what supply plants and how many such plants may associate with the Southeastern New England market. However, on the basis of the hearing record it is concluded that the 30 percent requirement provided constitutes a reasonable requirement at this time.

A "dairy farmer" is defined as any person who delivers bulk milk of his own production to a plant. Milk, however, may be received at a pool plant from dairy farmers who are not part of the regular supply of such plant. In order to distinguish such milk a "dairy farmer for other markets" definition is provided. Such milk may enter the market in any one of several ways. Milk of individual dairy farmers may be purchased directly by a broker, trucker, or similar individual who in turn disposes of it on a spot basis in the most attractive available outlet in this market or in other markets. Again, the milk may be purchased by a dealer, who operates both regulated and unregulated plants and received during the month at the pool plant only when a favorable outside market is not available. The same plant operator might dispose of milk through his nonpool plant during all or part of the months of July through November in favorable outside markets and seek to dispose of such milk through his pool plant during the flush production months when available outside markets are limited.

Any of the above mentioned circumstances would tend to place on the Southeastern pool the burden of carrying the surplus of outside Class I markets for which it would not share in the Class I sales. It would be improper to accord producer status to dairy farmers whose milk is handled under such arrangements. Recognition, however, must be given to the interlocking aspects of the several Federal order markets in the area. A dairy farmer should not be denied producer status during the flush production months if the plant to which he delivered his milk is then associated with this market and such plant had met all of the pooling requirements during each of the months of July through De-

ember but had nonpool status because it was a pool plant under another Federal order. Likewise a producer-handler who regularly had been associated with the market during the months of July through November, but who elected to change his status and become a regular handler buying from producers should not be denied status as a producer on his own farm production. Such a change in status would under normal circumstances be an asset to the pool since producer-handlers are usually high Class I utilization handlers.

The term "producer" defines those dairy farmers who constitute the regular supply for the market and to whom the minimum prices specified under the order must be paid. Under usual circumstances the respective health authorities having jurisdiction in the marketing area make regular inspections of individual farms and require the holding of valid farm permits or certificates of registration on milk permitted to be received at plants serving the market. However, under certain circumstances milk from dairy farmers not holding such permits or certificates is permitted to be received, commingled with other milk in the plant and distributed in the form of fluid milk products in the marketing area. It must be presumed, therefore, that if the milk is permitted to be received at a pool plant it meets the quality standards of the health authorities. Unless milk so received falls in the category of milk received from "dairy farmers for other markets", producer-handlers or producers under another Federal order issued pursuant to the Act it is intended that it be accorded status as producer milk. For reasons stated in the decision relating to "dairy farmers for other markets" it would be inappropriate to permit milk from such source to share in the equalization pool of this market. Similarly, a producer-handler does not share his Class I sales with the pool and accordingly should not be permitted to dispose of his excess milk through the pool.

The nearby Federal order markets have diversion provisions which permit a dairy farmer to retain producer status under those orders under specified conditions even though the milk was received at a nonpool plant. If the first receiver of the milk reports it as producer milk under another Federal order, such milk received as diverted milk from such other Federal order market will be excluded from the pricing and payment provisions of this order.

Since the day-to-day and month-to-month market requirements may vary, some accommodation must be provided to permit the efficient handling of any necessary surplus. It is expedient therefore to permit certain diversions if the handler who normally receives such milk chooses to divert it and accepts the responsibility of accounting for it. It is not necessary to limit in any way the extent of diversion to the plant of a buyer-handler or to other pool plants. Buyer-handlers have almost exclusively Class I utilization and depend on other handlers as a source of milk supply. The privilege of unlimited diversions to such operators will facilitate milk move-

ments in the most efficient manner. Milk diverted between pool plants would be pooled under any circumstances. The order provisions assure full accounting and pricing of the milk regardless of which plant is designated the receiving plant. If the handler to whom the milk is normally delivered desires to retain control thereof and chooses to report the milk as diverted there is no reason why the situation should not be accommodated.

The order provisions should not be so drawn as to encourage an excess volume of milk to associate with the pool. During the months of July through September when demand is greatest and the months of October through March when supply is lowest it is unnecessary to accommodate diversions to nonpool plants except insofar as may be necessary to assure orderly handling of the weekend surplus which accrues as a result of the fact that a plant operates only six days a week. Diversion privileges on 8 days (4 days in the case of every-other-day delivery) during the months of July through September and 12 days (6 days in the case of every-other-day) during the months of October through March will accommodate the situation.

The months of April through June are the months of highest production and it is desirable that handlers be permitted liberal diversion privileges to nonpool plants to expedite the orderly disposition of the necessary seasonal surplus. Accordingly, unlimited diversion to nonpool plants is permitted during this period.

The term "producer-handler" should be defined in somewhat more limited terms than is presently the case under the other New England Federal orders.

A producer-handler is intended to include only a person who is both a dairy farmer and a handler who processes milk from his own farm production and who distributes all or a portion of such milk as Class I milk on routes in the marketing area and, except under specified circumstances, receives no milk from any source other than his own farm production.

Typically, a producer-handler conducts a small family-type operation, processing, bottling, and distributing only own farm production. Full regulation of such individuals would provide considerable administrative difficulties.

The New England area, and more specifically the Rhode Island, Southeastern Massachusetts area herein under consideration, is unusual in that there is a large number of individuals who operate in varying capacities closely related to the ordinary conception of a producer-handler. There are some individuals who contract to have their own farm milk processed and bottled in the plant of another operator and returned for distribution. Others operate processing plants, at which their own farm production as well as receipts from other dairy farmers and/or plants are processed and distributed. If full exemption from regulation were provided for all of the various categories of individuals who distribute own farm production, the effectiveness of regulation in

the Southeastern area would be impaired.

Producer-handler type operations in this market differ from other New England order markets in numbers of individuals so engaged and in proportionate volume of the total sales. Development of direct distribution operations is relatively easy for many dairy farmers located in close proximity to the population centers in this market.

The record shows that about 25 percent of the licensed Rhode Island dealers distribute fluid milk through producer-handler type operations and over one-third of the dealers in the three Massachusetts counties of the marketing area have similar operations. The local New Bedford market has as much as 15 percent of its total milk supply distributed by producer-handler type operators with an additional 4 percent attributable to own farm production of dealers. The volumes of milk distributed by such individuals in the marketing area are sufficient in their total effect to hamper effective regulation of milk marketing in the market unless adequate provision is made in the order to regulate such milk. Many local dairymen, not presently engaged in distributing their own milk, are giving consideration to this type of operation as a means of enhancing their overall returns and evading equalization pooling.

Normally, exemption from regulated status is made in a Federal order for producer-handlers on the grounds that such businesses are small, family-type operations which have little effect upon the pool as long as they do not rely on the pool to carry their supplemental supplies and necessary surplus. This principle is preserved in the definition as herein proposed. Except in the case of small operators who produce not more than 1075 pounds (500 quarts) per day on a daily average during the month, producer-handler status may be preserved only so long as the individual involved receives no milk except own farm production. Under existing marketing conditions it is unlikely that a small operator could provide facilities to handle the wide range of packages in which milk is normally distributed. Permitting the small operator to maintain his status as a producer-handler and still receive packaged milk from pool handlers will accommodate this situation and at the same time facilitate the administration of the order.

In order to maintain producer-handler status it is provided that the maintenance, care, and management of the dairy animals and other resources necessary to produce the milk and the processing, packaging and distribution of the milk shall be the personal enterprise of and the personal risk of the person involved. This is intended to distinguish the family type operation, normally involved, and to bring under full regulation operations which attempt to masquerade as producer-handlers in their normal conception through hidden leases, rental arrangements and other corporate devices designed solely to circumvent regulation by the order.

Large operations which receive no milk directly from dairy farms other

than own farm production but which rely on other plants for supplemental supplies either in bulk or packaged form, are not significantly different from the operation of regular handlers. In addition, such individuals do not assume the risks nor cost of providing a full supply. If they are accorded producer-handler status the pool does not receive the benefit of their Class I sales but acts as a supply balance and carries their necessary surplus. Such operators who do not qualify under the producer-handler definition would, provided they sold a sufficient proportion of their milk in the marketing area, attain regular pool handler status and would participate in the equalization fund.

Producer-handlers are required to make reports as the market administrator deems necessary in order that he may determine and verify the continuing status of such individual and to facilitate accounting and verification of transactions involving other handlers.

The term "producer milk" is intended to include all skim milk and butterfat contained in milk produced by producers and received at pool plants directly from such producers. As previously stated limited diversions are permitted and such diverted milk is considered as a receipt at the plant from which it is diverted.

The term "other source milk" should be defined as all skim milk and butterfat utilized by a handler in his operations except fluid milk products received from pool plants, inventory of fluid milk products and current receipts of producer milk. The term should include all skim milk and butterfat in products other than fluid milk products from any source, including those produced at the handler's plant during an earlier month, which are reprocessed or converted to other products during the month. Other source milk is intended to represent all skim milk and butterfat from sources not subject to the classification and pricing provisions of the attached order. If other source milk is disposed of in Class I products, partial pricing and regulation is provided under compensatory payment provisions. Defining other source milk in this manner will insure uniformity of treatment to all handlers under the allocation and pricing provisions of the order.

Two criteria of "exempt milk" are set up which grant exemption from classification and pricing provisions of the order to certain quantities of milk which moves into the market during the month. The first concerns movement of milk from an unregulated plant to a regulated plant for processing and packaging and return to the unregulated plant during an interval in which the facilities of the unregulated plant are temporarily not available for use because of extraordinarily disastrous circumstances beyond the dealer's control. This procedure will in no way affect returns to regular producers and will accommodate the handling of milk in surrounding markets during disaster conditions. In the second case, exempt milk moves from a regulated plant to an unregulated plant for processing and packaging and is returned to the regulated plant after being packaged. This procedure will per-

mit regulated handlers to have producer milk bottled at unregulated plants while at the same time preserving for regular producer milk the full Class I use value of the milk moved to the unregulated plant.

Similar provisions are contained in the other New England Federal orders. They permit flexibility in handler operations and accommodate the handling of milk during emergency periods without adverse effect on the pool.

Exempt milk status should not be given to milk which is produced by a dairy farmer-distributor who has no processing or packaging facilities but relies on other handlers to custom bottle his milk which he then peddles on routes in the marketing area.

A dairy farmer-distributor should not be permitted to maintain a preferential Class I market outside the scope of regulation. The production resources which he maintains are the same as those of any other producer and he has no additional investment in processing facilities which entitles him to a preferential return over other producers. Exempt status should not be permitted for milk subject to handling in the foregoing described manner but it should be priced and pooled with other producer milk at the pool plant where first received.

The terms "milk", "cream", "half and half", "concentrated milk" and "fluid milk product" are defined to facilitate the classification scheme hereinafter set forth.

(b) *Classification of milk.* A classified use plan should be established to insure that all milk and milk products are fully accounted for by the handler who is responsible for accounting and reporting to the market administrator and for making payments to producers on receipt of producer milk. Accounting for milk and milk products on a skim milk and butterfat accounting basis and pricing in accordance with the form in which, or the purpose for which such skim milk and butterfat is used or disposed of as either Class I milk or Class II milk is the most appropriate means of securing complete accounting on all milk involved in market transactions.

Milk is disposed of in the market in a wide variety of forms, representing different proportions of butterfat and skim components of milk which may be greatly changed from the proportions of such butterfat and skim in milk as it is first received. Measured in terms of volume the products disposed of in the market may represent one quantity of milk and measured in terms of butterfat content only they may represent a different quantity.

There are obvious difficulties in reconciling the quantities of product to be priced, particularly when consideration is given to the increasing intermarket transfers of milk involved in the area, where accounting in one area is in terms of product weight and in another area is in terms of milk equivalent of butterfat. Uniformity of prices between markets depends upon a complete measure of the milk quantities involved and this must be accomplished in terms of both butterfat and the skim equivalent of solids.

Essentially, market administrators use a skim milk and butterfat accounting approach in their verification procedure regardless of whether or not such a system is spelled out in the order. The skim milk and butterfat accounting system provided for in the order recognizes the procedure generally used in Federal order markets for verification of the receipts and utilization of milk and milk products and will provide for uniformity in application of the accounting system to all handlers involved. The skim milk and butterfat accounting system should be adopted in the Southeastern New England market.

Only producer milk is intended to be priced under Federal orders; however, milk may be received at pool plants not only from producers but also from other handlers and other sources. Milk from all sources is commingled in the handler's plant(s). It is necessary to classify all receipts of milk and milk products in a plant to properly establish the classification of producer milk and to apply the provisions of a classified pricing plan to such milk.

The fluid milk products which are classified in Class I are required by the appropriate health authorities in the marketing area to be made from milk or milk products procured from approved sources. The extra cost incurred by producers in producing quality milk and in getting it delivered to the market in the condition and in the quantities needed by the market necessitates a price for milk used in Class I products somewhat above the price of milk used in manufactured products. This higher price must be at a level which will provide sufficient incentive to producers through the blended price returns to encourage the production of those quantities of milk needed for the Class I products plus the necessary reserve needed for fluctuations in the market demand.

Milk which is excess to Class I use at any time must be disposed of for use in manufactured products. These products are less perishable than fluid milk products and they compete with similar products made from unapproved milk on the national market. Milk so used must be classified as Class II milk and priced according to its value in such outlets.

Class I milk under the proposed classification scheme, shall be all skim milk (including that used to produce concentrated milk and reconstituted skim or fortified skim milk) and butterfat disposed of in fluid or frozen form as milk, flavored milk, skim milk, flavored or cultured skim milk, buttermilk, concentrated milk and 50 percent by weight of the product known as "half and half" which has a butterfat content of at least 10 percent but less than 16 percent. Skim milk and butterfat not specifically accounted for in Class II shall be classified in Class I.

All skim milk and butterfat used to produce products other than fluid milk products as set forth above shall be Class II. This classification would include all of those products which are generally considered as manufactured milk products not required by the health authori-

ties to be made from milk from approved local sources.

Fluid cream would be classified in Class II although it is generally considered in its physical form to be a fluid milk product. The area herein under consideration is an open cream market. Substantial quantities of fluid cream from outside sources are available in the Southeastern New England market and compete with cream derived from local producer milk. The inclusion of fluid cream as a Class I product would price cream derived from local milk supplies at a level above that applicable to fluid cream imported from other sources.

"Half and half" is a mixture of milk and cream or skim milk and cream with a butterfat content adjusted to between 10 percent and 16 percent. Classification of this entire product as Class I might seriously deter the use of local producer butterfat in such product since hotels and restaurants could combine bulk skim milk priced in Class I with cream priced in Class II and sell a combined product at a price reflecting the lower cost resulting from such mixtures. Accordingly, it is concluded that 50 percent by weight of the quantity of skim milk and butterfat in "half and half" should be classified in Class I and the remaining 50 percent should be classified as Class II.

Handlers have inventories of milk and milk products at the end of and beginning of each month which must enter into the accounting of receipts. The accounting procedure will be facilitated by providing that end-of-month inventories of all fluid milk products on hand be classified as Class II milk, regardless of whether such fluid milk products are held in bulk or packaged form. Inventories of such products will be subtracted from any available Class II disposition in the following month under the proposed allocation procedure. The higher use values of any Class I product in inventory assigned to current producer receipts during the month and which is allocated to Class I milk in the following month should be reflected in returns to producers. Inventories of Class I products on hand at a pool plant at the beginning of the month in which a plant first becomes pooled should be allocated to Class II utilization at the plant during the month. Priority of assignment of current producer milk to current Class I use will be preserved by this procedure.

Small and unavoidable losses of both skim milk and butterfat are experienced under usual circumstances during plant operations. Since handlers are required to make a full accounting for all plant receipts on a classified use basis, it is necessary to provide for the classification of these losses commonly known to the trade as "shrinkage". A plant which is operated in a reasonably efficient manner and for which complete and accurate records of receipts and utilization are maintained should have total shrinkage of not more than two percent of total receipts. Accordingly, it is concluded that shrinkage of skim milk and butterfat, respectively, not in excess of two percent of total receipts shall be classified as Class II and any amount in excess

of two percent shall be classified as Class I.

The skim milk and butterfat content of milk products received and disposed of by a handler can be determined through recognized testing procedures. Some of the products such as ice cream mixes and condensed milk present a more difficult problem in accounting in that some of the water present in the milk as received from producers is removed in processing. The respective volumes of skim milk and butterfat in such products can be ascertained through use of adequate plant records made available to the market administrator or by the use of standard conversion factors for skim milk and butterfat used to make such products. The basis of accounting for such products as condensed milk and nonfat dry milk should be the pounds of skim milk and butterfat required to produce the product.

Butterfat and skim milk in the form of Class I products may at times, because of deterioration of product or as a result of the handler's inability to dispose of route returns, be disposed of for livestock feed. Such disposition shall be classified as Class II if verifiable evidence of such disposition is available to the market administrator. Skim milk which a handler may find necessary to dump at times should also be classified in Class II.

The market administrator, however, must be provided opportunity to witness the actual dumping if he deems it necessary and to otherwise have verifiable evidence to substantiate such reported disposition. Such Class II utilization may be allowed only when the handler has given the market administrator reasonable advance notice of intention to dump skim milk and, in the case of dumping not witnessed by the market administrator or his agent, mails or delivers to the market administrator or his agent within 48 hours of such dumping a written report indicating the date of dumping and the quantity involved.

Except for that shrinkage previously described herein which is assigned limited classification in Class II, all skim milk and butterfat which is received and for which a handler is unable to establish utilization shall be classified as Class I. This procedure will assure producers of full value in accordance with actual use made of their milk and is designed to remove any advantage a handler might gain from failure to maintain complete and accurate records of utilization.

Each handler must be held responsible for a complete accounting on all of his receipts of skim milk and butterfat in any form. The handler who first receives milk from producers should be held responsible for establishing the classification thereof, and for making payments to producers. This principle is fundamental to effective administration of the order and is consistent with the practice followed in federally-regulated markets.

Skim milk and butterfat in the form of any fluid milk products transferred from a pool plant to another plant, under usual circumstances, should be classified on the basis of their utilization in the transferee-plant.

In the case of transfers between pool plants the allocation provisions as hereinafter set forth provide for priority of assignment of pool milk in Class I. Classification in accordance with use in the transferee-plant will provide adequate assurance to producers of the proper classification of their milk.

All butterfat and skim milk in fluid milk products transferred to the plant of a producer-handler should be classified as Class I and should not be subject to reclassification. A producer-handler, to maintain status as previously described herein, is limited in his purchases of fluid milk products to packaged fluid milk products for disposition as Class I. Since such purchases from pool plants are distributed as Class I products they should have automatic Class I classification.

Transfers of skim milk and butterfat in the form of fluid milk products in either packaged or bulk form from a pool plant under this order to a fully regulated plant under another Federal order should be classified in the class in which assigned under the other Federal order. The surrounding Federal order markets to which such transfers would likely be made are specific relative to the classification of receipts from nonpool plants under such orders. Accordingly, it is necessary that classification be determined under the provisions of such other orders. The other New England orders presently give recognition to packaged fluid milk products moving between such markets and credit Class I utilization to the originating market. If it were feasible to do so similar recognition should be given to milk transferred from Southeastern New England order plants. However, such recognition would require amendments to the other orders which cannot be accomplished on the basis of this record. The transfer provisions as herein proposed will accommodate any amendment to the other orders in this regard.

Skim milk and butterfat in the form of fluid milk products transferred from a pool plant to a nonpool plant, except a producer-handler plant or a plant fully regulated under another Federal order, shall be classified in Class I unless Class II utilization is established. In any event, the skim milk and butterfat assigned to Class I shall not be less than the disposition of skim milk and butterfat from the transferee-plant in the form of fluid milk products (Class I) on routes in the marketing area. Further, the amount of skim milk and butterfat so transferred and assigned to Class II shall not be greater than the amount of skim milk and butterfat, respectively, received in the form of fluid milk products from plants fully regulated under the several Federal orders which is in excess of the Class I utilization at the transferee-plant. Facilities are available under this order or in the surrounding Federal order markets to process any milk not needed in Class I and virtually all the available manufacturing facilities are attached to this pool or to one of the other Federal order markets. Hence any milk disposed of to a nonpool plant other than a pool plant under another Federal order, or to the plant of a producer-

handler, would normally be for Class I use. The other New England Federal order markets provide that such transfers shall be Class I. The provision as herein proposed will provide assurance of classification in Class I to the extent Class I utilization is available in the transferee-plant.

The volumes of skim milk and butterfat which move in the form of fluid milk products from a pool plant to a nonpool plant and thence to another plant should be classified in accordance with the use of such products at the final transferee-plant and by following the applicable procedure outlined previously herein for movements from a pool plant to the other various plants.

If transfer is made to a nonpool plant located outside New England or New York, classification of the skim milk and butterfat involved should be in Class I. Ample facilities exist within New England and New York State for manufacturing all milk not needed for Class I uses. Normally, all skim milk and butterfat shipped in the form of fluid milk products to outside areas would be for use as Class I. It would be uneconomical to make shipments of fluid milk products to distant locations for manufacturing uses, particularly since adequate facilities are available for processing surplus milk nearer the market. It is appropriate therefore, for administrative convenience and conservation of market administrator funds, and in view of adequate nearby manufacturing facilities, to provide for automatic classification in Class I of skim milk and butterfat in fluid milk products moved to plants outside New England and New York State.

The class prices established by the order apply only to producer milk. Since a plant may receive skim milk or butterfat from sources other than producer milk, a procedure must be established whereby it may be determined what quantities of milk in each class should be assigned to producer milk. The milk from producers who are regular suppliers of milk for the Southeastern New England market should be given priority in the assignment of Class I utilization in the assignment of Class I utilization at pool plants. Milk which is received from other sources should be assigned to the lowest available use classification. Unless this procedure is followed there can be no assurance that other source milk would not be used to displace producer milk in Class I when it is advantageous to the purchasing handler. If the order permitted handlers to obtain other source milk for Class I uses whenever it was advantageous to do so while producer milk in the plant was utilized in Class II the order would not be effective in carrying out the purpose of the act and the market would be deprived of a dependable supply of milk.

In making the assignments of skim milk and butterfat pursuant to the allocation provisions of the order, any milk received from sources not regulated by an order issued pursuant to the Act should be assigned first to Class II milk. The plant(s) supplying such milk may not have purchased it from dairy farmers on a classified use basis and it is not feasible to determine this or other condi-

tions of sale. Following the assignment of such unregulated other source receipts, bulk other source milk in the form of fluid milk products from plants regulated by other orders issued under the Act should be assigned to, except as provided below, the lowest available use classification.

During the months of July through September following the assignment of other source milk from non-Federal order sources, the lesser of 15 percent of producer receipts, or the remaining pounds of available use in Class II, should be deducted from Class II. These are the months of greatest demand for fluid milk in the market and hence the months in which supplemental supplies would most likely be needed. It is possible that a handler may have an overall supply of producer milk during any of such months and yet because of variation in day-to-day receipts or demand find it necessary to purchase supplemental supplies. While it is not intended that milk from other Federal order markets should replace local producer milk in Class I, handlers should not be penalized by having such necessary supplemental purchases classified as Class II. This procedure may result in some producer milk being classified in Class II while other Federal order milk is assigned to Class I. However, if producer milk is not available at the time when needed, local producers should not expect to receive a Class I credit for milk produced at other times when only a Class II use is available. Under this procedure a handler has assurance that if his producer receipts are inadequate to meet his Class I needs and he purchases milk regulated under another Federal order such milk will be assigned to Class I.

A number of exceptions were filed to the conclusions of the Deputy Administrator to provide for the limited assignment of producer receipts to Class II prior to the assignment of receipts from fully regulated plants under other Federal orders during only the months of July through September. Excepters pointed out that certain Southeastern New England handlers regularly have supplemented their producer receipts by purchases from other Federal order plants for purposes of balancing supply or to obtain specialty items and that failure to recognize this situation could work to the detriment of Southeastern producers since the handlers involved might conclude that it was more economical to terminate their relations with their regular producers and purchase their entire supply from other Federal order plants.

As previously indicated it is intended that the Southeastern market will carry a sufficient reserve supply throughout the year rather than depend on the adjacent Federal order markets for such reserve. It seems likely that the larger handlers in the market can readily adjust their operations to this end. However, it is possible that the smaller handlers with no supply plants and limited or no outlets for their necessary reserve may have some difficulty in adjusting their day-to-day supply to meet their Class I needs. It is concluded therefore that, during the months of

October through June, provision should be made to permit the assignment of 5 percent of producer receipts to Class II prior to the assignment of bulk receipts from fully regulated plants under the provisions of other Federal orders.

Since it is not intended that there be any compensatory payment on other source milk which is fully regulated under another order and which is disposed of for Class I use in this market (except skim milk so disposed of from Order No. 27 plants) this sequence of assignment of other source milk will tend to minimize the application of the compensatory payment provisions.

The exempt milk provisions of the order as heretofore set forth accommodate the processing and packaging of milk both for this market and for outside markets under specified circumstances. Such milk is always a Class I disposition but does not enter into the final accounting of pool handlers. It is necessary therefore, that exempt milk be deducted from Class I prior to the assignment of producer milk to remove any influence it might have in subsequent computations of the pricing and payment provisions.

The several New England orders now in effect provide that movements of packaged fluid milk products from one order plant to a different order plant shall be credited as a Class I disposition from the originating plant. It is intended that this order shall recognize this principle of free movement of packaged milk between markets. The pricing among the several orders is such that no pricing advantage can be gained by movements of packaged milk among markets. However, efficiencies in scale of operation derived from concentration of specialized packaging operations in a single plant may prove advantageous to multiple plant operators. This practice is being followed to a considerable extent in the case of several handlers under the other New England orders. This unrestricted competition for sales among all handlers whose milk is priced and regulated on a uniform basis will provide greater flexibility in daily operations of handlers and a better balance of milk supplies between markets will be gained by permitting the free movement of such packaged fluid milk products.

Inventory of fluid milk products on hand at the beginning of the month is subtracted from the lowest available use classification after the allocation of other source milk but prior to the allocation of producer milk.

Following the assignment of packaged fluid milk products from plants regulated under other Federal orders an amount equal to the producer receipts deducted from Class II prior to the allocation of bulk receipts from other Federal order markets is added to Class II.

The only remaining receipts not yet allocated are producer receipts and receipts from other pool plants. These are deducted in a sequence which assigns receipts not subject to a location differential first to Class I and the remaining receipts are then deducted from the highest remaining class utilization in sequence according to the nearness of the plants to Providence in accordance with

their zone location. This sequence of assignment will assure the assignment of producer receipts of each handler to the highest available use classification and will minimize the transportation allowance which producers are required to bear by assigning the milk nearest the market to Class I and the most distant milk to Class II. One exception to this principle is the assignment of out-of-area Class I sales directly from a plant subject to a zone location differential to producer receipts at such plant. The assignment of such sales to receipts at such plant maintains the relationship of milk price between plants as established by the order since the difference in price between plants with no location differential and those subject to a location differential reflects the cost of moving the milk to the marketing area.

If after making the assignments of skim milk and butterfat pursuant to the allocation provisions of the order, the total of all Class I and Class II milk assigned to producer milk exceeds the amount of producer milk reported to have been received by the handler for whose pool plants the computation is being made, such "overage" should be assigned to the available utilization in each class. When utilization records indicate a disposition greater than receipts it must be presumed that the handler underreported his receipts of producer milk. This "overage" is thus charged to him at the applicable class price in the lowest available class usage.

(c) *Determination and level of class prices.* The fundamental consideration in pricing milk in this market is to establish minimum Class I and Class II prices to producers which will result in adequate but not excessive milk supplies to meet the fluid milk requirements of the market plus a necessary reserve. Moreover, it is essential, to restore and maintain orderly marketing of milk in the area, that these minimum prices be in appropriate relationship with prices in other markets in the region.

It is not possible to predict the precise level of the uniform price which will result in this market from any prescribed level of class prices. However, it is desirable to strive for a close alignment of class prices between markets and depend upon differences in utilization and blend prices in the markets to distribute the milk supply among handlers and markets according to need at particular times. Normally, this balancing effect is accomplished by the operations of handlers who are established in the several markets who will either shift plants or producers between markets, or secure a balancing of blends and utilization by varying the shipments of packaged fluid milk products between markets.

Class I price. The New England basic Class I pricing formula should be incorporated in this order as the basis for determination of the Class I price. The Class I price is related by the formula to general economic conditions exerting influences upon milk prices in the area. The formula provides for adjustments in fluid milk prices to reflect changes in general economic conditions and in supply-demand relationships for milk in the New England markets on a prompt and

timely basis as the need appears. Recognition of seasonal fluctuations in production is included in the formula and it has been and continues to be an important basic factor for pricing milk in other Federal order markets in New England.

Prices in this market cannot be significantly different from prices in the other major New England markets or uneconomical shifts of producers between markets will occur with detrimental effect upon the stability and adequacy of supplies. The use of the same basic pricing formula for Class I milk which is incorporated in the other Federal orders in New England will contribute toward a sound price relationship and an integrated system of pricing fluid milk between markets. The basic Class I pricing formula incorporated herein was first made a part of the Boston order on April 1, 1948 and with subsequent modifications has been successful in maintaining appropriate levels of price in Boston and other Federal order markets in New England up to the present time.

The Class I price should be established at a level 7 cents above the Boston city plant Class I price. Boston handlers dispose of substantial quantities of milk in the proposed marketing area both by direct route distribution and through bulk shipments to plants in the area. It is appropriate therefore that the level of price in the marketing area reflect transportation costs from Boston to Providence, a distance of 43 miles (5 zones). The 1.2-cent differential which is used in zoning plant locations within the 21st zone represents an averaging of rail and truck transportation rates. However, since milk movements from Boston city plants to plants in the Southeastern marketing area are exclusively by truck it is appropriate to use truck transportation rates, which approximate 1.4 cents per 10-mile zone, in establishing a price relationship between Boston and Providence. Five zones at 1.4 cents per zone would result in a 7-cent higher Class I price level.

Since the Southeastern New England market is a deficit market a Class I price level 7 cents over the Boston city plant price will tend to implement the purposes of regulation of encouraging the association of additional milk supplies with this market, and at the same time, will assure general alignment of prices as between markets.

The New England basic Class I pricing formula contains a supply-demand adjustment factor based upon combined receipts and utilization under the Greater Boston, Merrimack Valley, Springfield and Worcester orders. Since all of these markets and the Southeastern New England market draw generally from a common supply area, it is desirable that the supply-demand adjustment factor reflect the total experience in all of these markets. However, since this cannot be accomplished on the basis of this record, it is proposed that the present factor be adopted for this market at this time. The language included in the proposed order will permit revision of the supply-demand adjustment factor without further amendment of this order.

The New England basic Class I pricing formula presently contains a contra-seasonal provision which prevents any downward price movement during the months of November and December. Experience in operation of the formula in the other New England markets has indicated that this mechanism has at times provided a substantially higher price during these months than the formula would otherwise have provided and as a result the market has experienced very abrupt price declines on January 1. In the interest of maintaining pricing alignment as between markets, no change is being recommended at this time in the formula as it would apply to this market. However, it appears appropriate that a review of this provision be made when the supply-demand adjuster is reviewed.

The price resulting from the application of the various formula components to the base period price is adjusted through a bracketing system to provide for price changes at 22 cents per hundredweight intervals which normally reflect resale price changes of one-half cent per quart. This procedure is followed under the other New England orders and by local unregulated and State regulated markets in the area and provides an appropriate basis for price movements in this proposed marketing area.

Class II price. The Class II price under the Southeastern New England order should be established on the same basis as that presently used in the pricing of Class II milk in the adjacent New England Federal order markets and at the level presently provided under the Springfield, Worcester and Merrimack Valley orders.

Some reserve milk in excess of that needed to meet Class I requirements is necessary to maintain an adequate supply of fluid milk for the market on an annual basis. The price for such milk, excess to Class I needs, should be maintained at the highest level consistent with facilitating its movement to manufacturing outlets when it is not needed in the market for Class I purposes. The Class II price should not be established at a level low enough to encourage procurement of milk supplies by handlers for the sole purpose of converting such milk into Class II products.

Most handlers who would be regulated under the proposed order have very limited facilities for handling any milk above that needed for day to day operation of their fluid business. Some facilities for manufacturing soft cheeses and ice cream or ice cream mixes exist in the market.

The formula as herein proposed would base the butterfat value of Class II milk on the Boston market quotations per 40-quart can of 40 percent bottling quality cream as reported for the month by the United States Department of Agriculture. The value of the skim component of the Class II formula is derived from the price of roller process and spray process nonfat dry milk, f. o. b. the Chicago area as reported by the United States Department of Agriculture for the month.

The fat and nonfat prices resulting from the formula computations are combined and an amount which varies the price seasonally is subtracted from such price to arrive at the Class II price applicable at those plants not subject to a location differential. The resulting price is adjusted by location differentials reflecting transportation cost to the city from plants located in excess of 100 miles from Providence.

In recent years New England has experienced a trend toward adequate supplies of cream from local producer milk sources and imports of cream into the market have at times been so small or so sporadic that no cream price average could be established for use as a guide to cream value. During the period from January 1956 to the present time a Boston cream price has been reported for only three months. It is necessary because of the decline in open market cream transactions to establish an alternative formula to reflect the value of butterfat in Class II milk. It is provided that in the absence of a cream price an alternative Class II value which is related to the average price of milk for manufacturing purposes, *i. e.*, plants in the United States as reported by the United States Department of Agriculture shall be used. If the value is higher in any month than the cream formula price such higher value shall be used. The Class II price formula herein proposed is similar to the price formula used in adjacent Federal order markets in New England and hence it will provide for compatibility between markets in the pricing of Class II milk.

The pricing provisions herein proposed utilize a number of reported prices and indices from specified sources. From time to time it is possible that an individual price or index may not be reported or published. Under such circumstances it is necessary to provide that the market administrator shall use a price or index determined by the Secretary to be equivalent to or comparable with the unreported or unpublished factor or price.

Location differentials. Location differentials should be established for milk received at plants located substantial distances from the market. Such differentials recognize the principle that milk similarly used and located should be similarly priced. Milk originating nearest the market should command a higher price than milk located at greater distances by at least an amount which reflects the difference in the cost of transporting it to the marketing area.

The ascertainment of the zone location of plants should be made on the same basis as presently provided in the other New England Federal order markets, *i. e.*, the shortest mileage distance over paved, first-class, all-weather roads as determined by the market administrator by use of the State maps contained in Mileage Guide No. 6, issued by the Household Goods Carriers' Bureau. Some latitude, however, must be provided to facilitate the zoning of plants which are not located on such roads. The precise procedure for the determination of mileage distance is set forth in the proposed order language.

Ideally the zone differentials should reflect actual differences in transportation cost between zones. While precise information on transportation costs was not presented at this hearing, the present differentials contained in the other New England order and herein proposed for inclusion in this order were established on the basis of evidence presented at a hearing conducted at Boston, Massachusetts on February 28-29, 1956, after extensive study by a market committee organized for that purpose. The adoption of the same schedule of differential is concluded to be appropriate at this time and will provide generally similar class prices as between orders at competing points.

The city of Providence, Rhode Island, the largest population center in the area, by location, appears to be the most appropriate point from which to determine mileage distance for zoning purposes. Plants therefore should be zoned on the basis of their distance from Providence.

Exceptions were filed to the recommended decision on the premise that the nearest point to which location differentials would be applicable (100 miles from Providence, Rhode Island) would, in the case of the furthestmost points of Cape Cod, still be within the marketing area and should there be a plant in such location receiving milk from producers, the application of the location differential provision would result in an inappropriate price. The record fails to show any plant in such location receiving milk from producers. Because of the extreme seasonality of demand in that area and the general lack of agricultural industry, there is little likelihood that the situation excepters set forth could occur and it is concluded that no change should be made in the Deputy Administrator's findings in this regard.

Payments on other source milk. The minimum class prices established under the order apply only to producer milk received at plants subject to pooling under the order. However, milk may also be received as nonpool milk directly from dairy farmers and from nonpool plants. Moreover, nonpool plants may have direct Class I disposition in the marketing area.

The role of the minimum classified pricing system as an integral part of a Federal milk order is to insure that price competition from reserve or excess milk will not break the market price for Class I milk, thereby destroying the incentive necessary to encourage adequate production of quality milk for fluid use. Because the classified pricing structure of the order is applicable only to pool plants, it is necessary in order to provide continued stable and orderly marketing, to remove any advantage unregulated plants may attain with respect to sales in the regulated market.

Virtually all of the plants in New England, except those with a preferential Class I market in an unregulated area, are presently attached to the Boston, New York or secondary New England Federal order markets and with the promulgation of this order will continue to be so attached. Others will come under regulation of this order. Accord-

ingly, any unregulated other source milk entering this market can be presumed to be milk which is surplus to its normal unregulated Class I market and which would otherwise have to be disposed of for manufacturing uses.

Operators of unregulated plants have a real financial incentive to sell their excess milk below the Class I price established by the order since any value in excess of the value of such milk for manufacturing purposes would represent a financial gain. The order, therefore, must contain a provision to neutralize any price advantage such unregulated plant operators might have on Class I sales made in the marketing area.

As previously stated, it is not intended that compensatory payments shall be applicable to other source milk which is fully regulated under another Federal order and which is disposed of as Class I milk in this market except in the case of skim milk disposed of from Order No. 27 pool plants.

The classified pricing structure under the order cannot be successful in the long run in assuring returns to producers at the rates contemplated by the Act if it is possible for some handlers to purchase other source milk for Class I use at less than the Class I price. One handler with a price advantage in procurement precipitates a breakdown of a classified pricing system by compelling other handlers to resort to sources of milk supply other than regular producer milk. Unstable marketing conditions are thus created. This is precisely the situation which led to the request for regulation in this proposed marketing area.

Since payment of minimum class prices does not apply to handlers not participating in the marketwide equalization, the integrity of the classified pricing system of the order must be maintained by levying a charge against other source milk to remove any cost advantage accruing to handlers using unregulated milk in Class I instead of regular producer milk.

The rate of compensatory payments applicable to other source milk disposed of in the marketing area from unregulated plants should be the same as those applicable to other source milk distributed from pool plants. Handlers who operate pool plants have the same opportunity as handlers who operate unregulated plants to buy other source milk at the opportunity cost level. The operator of an unregulated plant, however, probably has surplus milk in his own plant resulting from his individual operations which he is willing to dispose of on any basis which yields a higher return than the value in manufacturing use. Without a compensatory payment provision this could be accomplished by sales to regulated handlers or by direct route sales including sales to Government installations and institutions. The number of institutions, establishments and installations in the marketing area purchasing Class I on contractual arrangements makes it particularly easy for a handler to dispose of other source milk for fluid uses by bidding for such contracts. Since surplus or manufacturing outlets are the only alternative for this

excess milk, considerable incentive exists to underbid the fully regulated handler by using unregulated and unpriced milk for such sales.

It is concluded that the rate of compensatory payment on other source milk utilized in Class I should be the difference between the Class I price and the value of milk for manufacturing uses at the zone location of the originating plant.

Class I milk under the order is priced at the plant where the milk is received from producers, hence, the compensatory payment on other source milk, should be computed at the same stage of the marketing process to be directly comparable. No allowances are made in the order for costs or profits of handlers in moving producer milk to subsequent stages of marketing, neither should they be made for other source milk.

The Class II price established by the order is considered a fair and economic measure of the value of milk in manufacturing uses in New England and hence represents an appropriate value for other source milk except under the special circumstance discussed below.

Because of the limited manufacturing facilities available in the State of Maine and its isolated position relative to terminal markets, manufacturing milk values are generally below values which would result from the application of the Class II location differential schedule to the marketing area Class II price. Since milk excess to local fluid needs has a very limited market in the State of Maine, such milk is generally available to Southeastern New England handlers at its local manufacturing milk value plus transportation to the marketing area. Under normal circumstances, the surplus price established by the Maine Milk Control Commission reflects the value of milk for manufacturing purposes in this area and it is therefore appropriate that such price be used as a basis for computing the amount of compensatory payment of any milk originating within the State. However, should such price be higher than the Class II price established under this order, it could not be presumed to represent the value of milk for manufacturing use. Under such circumstance it is appropriate that the amount of any compensatory payment be computed at the difference between the order Class I and Class II price at the zone location of the originating plant.

A unique situation exists in the opportunity available to handlers to move skim milk from the New York-New Jersey market (Order No. 27) into this market at considerable cost advantage over skim milk priced under this order. A butterfat-skim accounting system will be used in this market. The system under Order No. 27 is one of butterfat accounting and it is possible that skim milk received in producer milk under that order may not carry a Class I price. This situation provides an opportunity for handlers in this market to purchase skim milk from Order No. 27 plants at its value for manufacturing purposes for disposition in Class I uses in this market. A compensatory payment is necessary therefore in the case of skim milk, as such, entering this market for Class

I use from Order No. 27 pool plants to remove any cost advantage in the use of such skim milk. Such payment should be the difference between the Class I price and the Class II price under this order for the zone location of the originating plant.

All funds collected from compensatory payments should be added to the producer-settlement fund. The handler regulated by the order should be obligated to make compensatory payments to the producer-settlement fund. There will be no difference in actual price paid for milk whether the payment is made by the regulated handler or by the operator of the unregulated plant from which the other source milk was obtained. Because the regulated handler makes the actual distribution of the milk in the marketing area and because he reports the utilization to the market administrator, he is, from an administrative view, the logical person to make the payment.

(d) *Distribution of proceeds to producers.* The order should provide for the distribution of returns to producers through a marketwide equalization pool. This type of pooling results in a uniform price to all producers which varies only to reflect differences in butterfat content of producer milk and the location of plants at which the milk is received from individual producers.

Dairy farmers in the New England states produce milk for fluid consumption. As previously indicated, virtually all of the plants in the milkshed are either presently regulated under one of the existing orders in the area or have a preferential Class I outlet in an unregulated market. Under the production conditions existing in the area it is not practical to produce milk for manufacturing uses. However, because of day to day fluctuation in receipts and sales and the normal seasonality in the production pattern, it is inevitable that some milk must be disposed of for other than fluid uses. Under normal circumstances a reserve supply approximating 20 percent of the volume of Class I sales is considered necessary during the months of lowest production in order to provide an adequate supply throughout the month. Under such circumstances the volume of milk excess to Class I needs during the peak months of production is substantially greater.

Unless provision is made for the equitable sharing of the necessary market reserve among all producers through marketwide pooling the burden of handling the reserve will fall upon the surrounding Federal order markets. Under an individual handler pooling arrangement there would be strong incentive for handlers in this market to maintain high producer returns and rely on other markets for supplemental supplies. Such arrangement would result in serious disparity between blended prices in the upcountry supply area and would encourage exorbitant transportation charges and lead to unstable marketing conditions in the supply area.

Very limited surplus handling facilities are available in the marketing area and the burden of carrying the market surplus has for the most part been left

to the several associations of producers whose members are suppliers of the market. A marketwide pooling arrangement will facilitate the activities of these cooperatives in carrying the necessary surplus and promote orderly marketing throughout the New England area. It will provide for equitable sharing by all producers of the lower returns realized from milk excess to Class I needs and will permit the processing of this reserve supply at those plants where it can be handled most efficiently.

The marketwide pool method of paying producers will require a producer-settlement fund for making adjustment in payments required of handlers so that the total sums paid by each handler will equal the value of milk received by him at the prices established by the order.

Under this pooling arrangement handlers who are required to pay more for their milk on the basis of their utilization than they are required to pay to producers or cooperative associations will pay the difference to the producer-settlement fund. Handlers who are required to pay more to producers or cooperative associations than they are required to pay for their milk on the basis of its utilization will receive the difference from the producer-settlement fund. The market administrator in making payment to any handler from the fund should offset such payments by any amount of payments due to the market administrator from such handler. This is a recognized sound business practice and insures against the possibility of the market administrator being required to make payments to a handler who is already indebted to the market administrator and financially unable to discharge his obligations thereto, or to a handler who seeks to obtain or has obtained money from the fund through the filing of incorrect reports.

If at any time the balance remaining in the producer-settlement fund is insufficient to discharge all obligations due handlers from the fund, payments to handlers should be reduced uniformly per hundredweight of milk. Each handler may then reduce payment to producers by an equivalent amount per hundredweight. The remaining amounts due to handlers from the fund should be paid as soon as the balance is sufficient at which time the handlers shall complete payments to producers. To reduce the likelihood of insufficient balance in the producer-settlement fund, milk received by any handler who has not made the required payments to the fund for the preceding month should not be included in the current month uniform price computation.

The order should provide that a cooperative association of producers which is determined by the market administrator to be authorized to collect payments otherwise due its members, and which has requested such payments in writing from the responsible handler, shall be paid by the handler in the amount due to its producer-members. The proposed order recognizes a cooperative association of producers by definition "to be engaged in making col-

lective sales or marketing of milk or its products for the producers thereof". As the authorized agent of its producer-members an association has the authority as recognized by the act to collect payments due its members from the sale of milk produced by its members and this procedure is presently being followed by cooperative associations in the market.

As hereinbefore stated, the area proposed is generally an open cream market and butterfat from local producer milk must compete with cream imported from outside areas. It is considered essential, therefore, that the price established for butterfat in producer milk be closely correlated with open market butterfat values.

It is concluded that handlers should be charged the same value for differential butterfat above or below the basic test at which milk is priced whether used in Class I or Class II. Under these circumstances, it is unnecessary to clear the differential butterfat through the equalization pool and no handler butterfat differential has been provided. In order that returns to each producer reflect the value of his milk at the butterfat test at which such milk is received it is provided that each handler in paying producers shall adjust the uniform price by the application of a producer-settlement differential.

The basic butterfat test of milk upon which uniform prices to producers should be computed is 3.7 percent. For that milk which a handler receives from producers which varies in butterfat content from this basic test of 3.7 percent it is provided that an addition or subtraction, as the case may be, of a butterfat differential shall be made for each one-tenth of one percent that such average butterfat content of the individual producer's milk varies from this basic test. The producer butterfat differential is directly related to the butterfat value computed in the Class II price formula which is based upon the market value of butterfat in fluid cream on the Boston market. An alternative value based on the New York butter price is provided for if no cream price is reported for the month. The butterfat differential adjustment assures producers of payment for their milk on the basis of its use value according to the competitive value of butterfat on the open market in fluid cream or manufactured products. Milk in this market has generally been priced at a basic test of 3.7 percent and this is also the basic test in surrounding New England Federal order markets.

In making payments to producers for milk received at plants located in excess of 100 miles from Providence the uniform price should be reduced 42 cents plus 1.2 cents for each additional ten miles distance or fraction thereof which such plant is located from Providence up to the 201-210 mile zone when the differential is reduced to 1.0 cent for each additional zone thereafter. These are the same location differentials applicable to handlers under the Class I pricing provisions. Since the milk is produced for a fluid market and it must be moved to the

marketing area to have a Class I outlet it is appropriate that the returns to more distant producers reflect the cost of transportation to the market.

Provision should be made for the payment of farm location differentials to producers in the nearby supply area. The amount of these differentials will be obtained by an appropriate deduction from the total value of all milk before completing the computation of the marketwide uniform price.

Producers located in the State of Rhode Island and east of the Connecticut River in the State of Connecticut and in the Massachusetts Counties of Barnstable, Bristol, Dukes, Nantucket, Plymouth, Norfolk and Suffolk and that part of Worcester and Middlesex south of the Massachusetts turnpike should receive a farm location differential over the basic blended price of 46 cents per hundred-weight. Producers located in the Massachusetts counties of Essex and that part of Worcester and Middlesex north of the Massachusetts turnpike and in the New Hampshire towns of New Ipswich and Greenville should receive a farm location differential of 23 cents per hundred-weight. However, in no event should the amount of such differential result in a price higher than the applicable Class I price at the plant where the milk is received.

Historically, dairy farmers in the States of Massachusetts, Rhode Island and Connecticut, because of their location with reference to the large population concentrations of New England have disposed of a substantially larger percentage of their production for fluid uses than have dairy farmers in the upcountry area. Hence nearby producers have been able to realize a price higher in relation to more distant producers than can be accounted for by the advantage in the cost of transportation to market. Under the marketwide pooling herein proposed and without some adjustment mechanism the nearby producer, notwithstanding, would be paid on the basis of the average utilization of all milk on the milkshed rather than according to the utilization of his milk. Under a regulated market, however, he obtains the benefit of an established Class I price which may be higher than in the absence of regulation, and has assurance that his milk will not be displaced by cheap, unregulated milk from more distant sources. The distant producer also benefits from an established Class I price, and by the fact that he gains a larger share of the fluid market than is likely without marketwide equalization.

The use of a nearby differential will return to nearby producers a somewhat greater share of the Class I price than they would otherwise obtain through marketwide pooling. Moreover such a differential will tend to provide returns to both nearby and upcountry producers more nearly in line with their prospective returns without marketwide equalization.

The scheme of nearby farm location differentials and the amount thereof is identical with that employed in adjacent Federal order markets. The differential as herein proposed will provide for equal-

table distribution of pool proceeds among all producers and will promote orderly and stable marketing in the entire New England area. The adoption of nearby farm location differentials was proposed and generally supported by interested parties at the hearing.

Several proponents advocated that nearby differentials be related to the supply-demand balance of the market and varied inversely with this relationship. When the Class I utilization percentage for the market as a whole was 91 percent or more no differential would apply. As the Class I utilization percentage decreased the differential would increase with a maximum differential of 87 cents being applicable when the utilization percentage dropped to 71 percent or less. While various hypothetical pool computations were offered to show the application of this scheme of differential it is not possible on the basis of this record to appraise what the actual market situation will be.

Proponents excepted to the Deputy Administrator's conclusions to include the entire State of Connecticut in the 46-cent farm location differential area, contending that the Southeastern New England market presently draws no milk from that State west of the Connecticut River, that milk from that part of Connecticut presently moves primarily to the Connecticut market, which is a deficit market, and that it was inappropriate therefore to extend the farm location zone into such area. Other parties excepted to the conclusion to provide a 23-cent farm location differential for certain areas of Massachusetts north of the turnpike and to specified towns in the State of New Hampshire, contending that such areas overlapped the farm location differential area of the Worcester order and were closer to the market than other areas included in the 46-cent differential area.

For reasons set forth in the record evidence, it is concluded that under existing circumstances the 46-cent farm location area should not include that part of Connecticut west of the Connecticut River. It is further concluded that no change should be made in the Deputy Administrator's decision to establish an intermediate 23-cent farm differential area north of the Massachusetts turnpike. Milk produced in that area normally moves to the Springfield, Worcester or Merrimack Valley markets or to local Massachusetts markets. Except for the 15 dairy farmers in whose behalf exceptions were filed, the record shows no milk moving from this area to the Southeastern New England market. This area, however, stands between the upcountry supply area and the Southeastern New England market area. Hence, it is appropriate that some recognition be given to the area in establishing nearby farm location differentials. But, the area is not one from which a major portion of the supply is moved to the Southeastern New England area. It is concluded, therefore, that the twenty-three cent farm location differential as proposed, will provide any producers in the area in question appropriate returns in relation to their loca-

tion with reference to the Southeastern New England market.

The order should provide that each handler pay each producer not later than the 5th day after the end of the month for milk received from such producer during the first 15 days of the month an amount per hundredweight not less than the Class II price applicable for the month. Final payment should be made on or before the 20th day after the end of the month. These dates correspond closely to the dates on which payment is customarily made to producers in the area. All payments made to a cooperative association for distribution to producer-members should be made two days prior to the date payment to individual producers is required and should be accompanied by written statements sufficient to identify the individual producers entitled to receive such payment by name, address or number and should show the volume of milk delivered, the butterfat content of such milk and other necessary information (including amount of and reason for handler deductions), required for proper distribution of monies to the association producer-members for whom it makes collections.

The responsible handler shall make only proper deductions for goods and services furnished to and for payments made on behalf of the producer upon proper authorization in writing given him by the producer.

Several proponents of the order proposed that a base and excess quota plan be established in the market to encourage a balance in the seasonality of production. Such proposal was not supported by the majority of producer interests, however. The seasonality of pricing established in the proposed order is intended to encourage a pattern of production compatible with the fluid needs of the market and has worked successfully in adjacent Federal order markets. Under the circumstances, the proposal is not adopted.

(e) *Administrative provisions.* The marketing agreement and order should provide for other general administrative provisions which are common to all orders and which are necessary for proper and efficient administration of the order.

In addition to the definitions set forth earlier in this decision definition of certain other terms is necessary for brevity and to assure that each usage of such terms denotes the same meaning. These include the terms "Act", "Secretary", "Person".

Provision should be made for the appointment by the Secretary of a market administrator to administer the terms and provisions of the order, and the order should define his powers and duties, prescribe the information to be reported by handlers each month, set forth the rules to be followed by the market administrator in making computations required by the order, and provide for the liquidation of the order in the event of its suspension or termination.

The powers of the market administrator as set forth in the order are specifically provided in section 8c (7) (C) of the

Agricultural Marketing Agreement Act of 1937, as amended, and the proposed language is essentially that of the statute.

The duties of the market administrator as set forth are those which are found in all Federal milk marketing orders and are necessary to define specifically the responsibilities of the market administrator.

Handlers should be required to maintain adequate records of their operations and to make the reports necessary to establish classification of producer milk and payments due for such milk. Time limits must be prescribed for filing such reports and for making payments to producers.

A number of exceptions were filed to the decision of the Deputy Administrator to require skim milk and butterfat accounting. Excepters contended that such accounting would require substantial adjustments in their present record keeping in order to meet the 8th of the month deadline for filing reports of receipts and utilization. Some suggested that for a reasonable period handlers be permitted, if they so desired, to report receipt and disposition of milk and milk products on a volume basis without regard to the skim milk and butterfat components thereof with the understanding that the final audit and computation of their pool obligations would be under the skim milk and butterfat accounting procedure, as recommended. They pointed out that this interim period before invoking the requirement for skim milk and butterfat reporting would permit handlers to make necessary adjustments in their record keeping in an orderly manner at minimum cost.

It is recognized that multiple plant handlers with some plants regulated by this order and others regulated under another New England Federal order might find it necessary to make substantial changes in their present accounting systems to meet the reporting requirements. For reasons previously stated, it is essential that handlers be required to account for all of their receipts and utilization of milk and milk products on a skim milk and butterfat basis. However, some accommodation can be provided to minimize the necessity for hasty and hence possibly costly adjustments by handlers in their long established accounting systems. A period of six months from the effective date of the order, therefore, is provided in which handlers may, if they so desire, make their monthly reports of receipts and utilization of milk and milk products on a volume basis without regard to the skim milk and butterfat components thereof. The establishment of this interim period of optional reporting however, does not alter the requirement for audit and final accounting of each handler's pool obligations on a skim milk and butterfat basis.

It is likely that most handlers will find it desirable to immediately adapt their record keeping on a skim milk and butterfat basis. Since all handlers will not report to a skim milk and butterfat basis during the interim six-month period, the market administrator will not be able to verify receipt and utilization on a skim milk and butterfat basis until

final audit. This will undoubtedly increase the work load of the administrator and the number of audit adjustments during such period, but will not change the final overall pool obligations of the several handlers in the market.

Handlers should maintain and make available to the market administrator all records and accounts of their operations and such facilities as are necessary to determine the accuracy of the information reported to the market administrator as he may deem necessary together with any other information upon which the classification of producer milk or payments to producers depends. The market administrator must be permitted to check the accuracy of weights and tests of milk and milk products received and handled and to verify all payments required under the order.

It is necessary that handlers maintain records to prove the utilization of producer milk and that proper payments were made. Books and records should be retained by handlers for a reasonable period of time to allow for complete auditing of all handlers associated with the market.

There are limitations on the period of time handlers shall retain those records which are required to be made available to the market administrator, and on the period of time in which obligations under the order should terminate. The provision made for such limitations is identical in principle with the general amendment made to all orders in operation on July 30, 1947, following the Secretary's decision of January 26, 1949 (14 F. R. 444) which covered retention of records and limitations of claims and is equally applicable herein and is adopted as a part of this decision.

A provision should be made in the order for performance of marketing services for producers, such as verifying the tests and weights of producer milk and furnishing market information. These services should be provided by the market administrator and the cost should be borne by producers receiving the service. If a cooperative association is performing such services for its member producers, the market administrator will accept this in lieu of his own service.

Orderly marketing will be promoted through a marketing service program by assuring individual producers that payments received by them for their milk are in accordance with the pricing provisions of the order and accurately reflect the weights and tests of milk delivered. Complete verification requires that butterfat tests and weights of individual producer deliveries as reported by the handler are proved to be accurate.

Dissemination of current market information to all producers will promote efficiency in production, utilization and marketing of milk and should be included in the order as an additional phase of the marketing service program.

A maximum deduction of 5 cents per hundredweight should be provided to enable the market administrator to perform the marketing services to producers. This deduction will apply to all receipts of milk from producers for whom he renders marketing services. If

later experience indicates that marketing services can be performed at a lesser rate, provision is made for the Secretary to adjust the rate downward without the necessity of a hearing.

Any cooperative association of producers performing marketing services for its producer-members shall receive such deductions as the producer-members authorize for providing such services in lieu of the 5-cent maximum rate deducted from payments made to nonmember producers.

Each pool handler shall be required to pay the market administrator as his pro rata share of the cost of administering the order not more than 5 cents per hundredweight or such lesser amounts as the Secretary may prescribe on (1) producer milk (including such handler's own production), (2) exempt milk, and (3) other source milk which is classified as Class I except that the rate of assessment applicable to other source milk received in the form of fluid milk products from a fully regulated plant under another Federal order shall be the amount by which the rate of assessment under this order exceeds the rate of assessment under the other Federal order. Nonpool handlers will be assessed on the quantities of other source milk disposed of as Class I milk on routes in the marketing area and buyer handlers shall pay on the quantities of other source milk classified as Class I.

The market administrator must have sufficient funds to enable him to administer properly the terms of the order. The act provides that cost of administration shall be financed through assessment of handlers. One of the duties of the market administrator is to verify the receipts and disposition of milk from all sources. Equity in sharing the cost of administration of the order among handlers will be achieved by applying the administrative assessment to all producer milk (including handler's own production) and other source milk assigned to Class I. Class I milk sold in the marketing area by nonpool handlers should bear its proportionate share of the administrative expense.

In view of the number of small handlers who do business in the market, the large volumes of milk anticipated, the distances involved and the cost of administering orders in comparable markets, an assessment rate of 5 cents per hundredweight is concluded necessary to meet the expenses of administration. Provision should be made to enable the Secretary to reduce the rate of assessment below the 5-cent maximum rate without necessitating an amendment to the order. This should be done at such time that experience might reveal that a lesser rate will provide adequate revenue to administer the order properly.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of several interested parties in the market. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions set forth in the briefs are inconsistent with the findings and conclusions herein, the requests to make such

findings or to reach such conclusions are denied for the reasons previously stated in this decision.

General findings. (a) The proposed marketing agreement and order and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(b) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds and other economic conditions which affect market supply and demand for milk in the marketing area and the minimum prices specified in the proposed marketing agreement and the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The proposed marketing agreement and order will regulate the handling of milk in the same manner as, and will be applicable to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the Southeastern New England Marketing Area", and "Order Regulating the Handling of Milk in the Southeastern New England Marketing Area," which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the attached order which will be published with this decision.

Referendum Order; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted among producers to determine whether the issuance of the attached order regulating the handling of milk in the Southeastern New England marketing area, is approved or favored by the producers, as defined under the terms of the proposed order, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

The month of July 1958 is hereby determined to be the representative period for the conduct of such referendum.

A. T. Radigan is hereby designated agent of the Secretary to conduct such

referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders as published in the FEDERAL REGISTER on August 10, 1950 (15 F. R. 5177), such referendum to be completed on or before the 20th day from the date this decision is issued.

Issued at Washington, D. C., this 21st day of October.

[SEAL]

TRUE D. MORSE,
Acting Secretary.

Order Regulating the Handling of Milk in the Southeastern New England Marketing Area

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990.0	Findings and determinations.
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¹ This order shall not become effective unless and until the requirements of § 990.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

MISCELLANEOUS PROVISIONS

Sec.	
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AUTHORITY: §§ 990.0 to 990.85 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c.

§ 990.0 Findings and determinations.—(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed marketing agreement and a proposed order regulating the handling of milk in the Southeastern New England marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest;

(3) The said order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in this order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment, as a pro rata share of such expense, 5 cents per hundredweight or such amount not to exceed 5 cents per hundredweight as the Secretary may prescribe as follows: (i) by each pool handler with respect to (a) receipts of producer milk, including such handler's own production, (b) receipts of exempt milk, and (c) receipts of other source milk classified as Class I; (ii) by each buyer-handler with respect to receipts of other source milk classified as Class I, and (iii) by each nonpool handler, except a buyer-handler, with respect to other source milk disposed of as Class I milk in the marketing area on routes.

In lieu of the payments prescribed above, in the case of such other source receipts from a plant regulated under another Federal order, the rate of payment

shall be an amount by which the rate of assessment under this order exceeds the rate of assessment applicable on such milk under other Federal orders.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Southeastern New England marketing area shall be in conformity to, and in compliance with, the following terms and conditions:

DEFINITIONS

§ 990.1 General definitions. (a) "Act" means Public Act No. 10, 73d Congress, as amended, and re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended.

(b) "Southeastern New England marketing area", hereinafter referred to as the "marketing area" means all of the territory included within the boundary lines of the State of Rhode Island (excluding Block Island) and the Massachusetts counties of Bristol, Plymouth (excluding the towns of Hingham and Hull) and Barnstable, together with all piers, docks and wharves connected therewith and craft moored thereat and including all territory within such boundaries which is occupied by Government (municipal, State or Federal) installations, institutions, or other establishments.

(c) "Route" means any disposition to retail or wholesale outlets (including any delivery by a vendor or from a plant store) of fluid milk products classified as Class I milk pursuant to § 990.21 (a) other than in bulk to a plant.

§ 990.2 Definitions of persons. (a) "Person" means any individual, partnership, corporation, association, or any other business unit.

(b) "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

(c) "Dairy farmer" means any person who delivers bulk milk of his own production to a plant.

(d) "Dairy farmer for other markets" means any person described in subparagraphs (1), (2), and (3) of this paragraph:

(1) Any dairy farmer with respect to milk which is purchased from him by a dealer who does not operate a pool plant during the month and which milk is moved to another handler's pool plant directly from the dairy farmer's farm;

(2) Any dairy farmer with respect to milk which is purchased from him by a dealer who during the month operated both pool and nonpool plant(s) and which milk is moved to a pool plant, if such dealer caused milk from the same farm to be moved as nonpool milk to a nonpool plant(s) during the same month;

(3) Any dairy farmer whose milk is received by a handler at a pool plant during the months of December through June from a farm from which the handler received nonpool milk during any of the preceding months of July through November: *Provided*, That the term shall not include any person who was a pro-

ducer-handler during any of the preceding months of July through November or any dairy farmer from whom the handler received milk during such months of July through November only at a plant which was a pool plant under another order but which met all of the applicable requirements for pool plant status under this part during such months;

(4) As used in this paragraph, the terms "handler" and "dealer" include affiliates of and persons who control or are controlled by, the handler or dealer.

(e) "Producer" means any dairy farmer (except a dairy farmer for other markets, a producer-handler or a dairy farmer who is a producer under another Federal order with respect to milk diverted from a plant subject to such other order) whose milk is delivered from his farm to a pool plant or is diverted in accordance with subparagraphs (1) to (4) of this paragraph if the handler, in filing his monthly report pursuant to § 990.30 reports the milk as receipts from a producer at such pool plant:

(1) To the pool plant of another handler or to the plant of a buyer-handler;

(2) To a nonpool plant (except the plant of a buyer-handler) during any month from July through September on not more than 8 days (four days in the case of every-other-day delivery) during such month;

(3) To a nonpool plant (except the plant of a buyer-handler) during any month from October through March on not more than 12 days (six days in the case of every-other-day delivery) during such month; or

(4) To a nonpool plant during the months of April through June.

(f) "Association of producers" means any cooperative marketing association which the Secretary determines to be qualified pursuant to the provisions of the act of Congress of February 18, 1922, known as the "Capper-Volstead Act," and to be engaged in making collective sales or marketing of milk or its products for the producers thereof.

(g) "Handler" means any person who during the month operates a pool plant, or any other plant from which fluid milk products are disposed of, directly or indirectly, in the marketing area.

(h) "Pool handler" means any handler in his capacity as the operator of a pool plant.

(i) "Producer-handler" means any person who is both a dairy farmer and a handler who processes milk from his own farm production, distributing all or a portion of such milk as Class I milk on routes in the marketing area and (1) whose own farm production does not exceed 1,075 pounds on a daily average during the month and whose only source of supply for fluid milk products, is milk of his own farm production and packaged fluid milk products from pool plants, or (2) whose sole source of supply for fluid milk products is milk of his own farm production: *Provided*, That the maintenance, care, and management of the dairy animals and other resources necessary to produce the milk and the processing, packaging and distribution of the milk are the personal enterprise and the personal risk of such person.

(j) "Buyer-handler" means any handler who operates a bottling or processing plant from which at least 10 percent of his total receipts of fluid milk products is disposed of by him as Class I milk on routes in the marketing area during the month and whose entire supply of fluid milk products is received from other handlers.

(k) "Dealer" means any person who operates a plant at which he engages in the business of receiving fluid milk products for resale or manufacture into milk products, whether or not he disposes of any fluid milk products in the marketing area.

§ 990.3 *Definitions of plants.* (a) "Plant" means the land, buildings, surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, handling, or processing of milk or milk products.

(b) "Receiving plant" means any plant which is currently used for receiving, weighing or measuring, sampling, and cooling milk received there directly from dairy farmers' farms in cans, and for washing and sterilizing such cans; or which is currently used for receiving milk directly from dairy farmers' farms by tank truck; and at which are currently maintained weight sheets or other records of the individual farmers' deliveries.

(c) "Pool plant": Subject to the conditions of subparagraphs (1), (2) and (3) of this paragraph "pool plant" means (i) any receiving plant from which at least 10 percent of its total receipts of milk directly from dairy farmers is disposed of in the marketing area on routes during the month as Class I milk and not less than 50 percent of such receipts are disposed of during the month as Class I milk either inside or outside the marketing area; (ii) any receiving plant other than a plant specified in (i) of this paragraph, from which not less than 30 percent of its receipts of milk from dairy farmers is shipped during the month as bulk milk to a plant from which at least 10 percent of its total receipts of fluid milk products, other than exempt milk, is disposed of in the marketing area as Class I milk on routes and not less than 50 percent of such receipts is disposed of as Class I milk either inside or outside the marketing area; or (iii) any plant located in the marketing area and operated by an association of producers.

(1) A plant shall not qualify as a pool plant if it is operated as the plant of a producer-handler or as a pool plant pursuant to the provisions of another Federal marketing agreement or order.

(2) Any plant which qualified as a pool plant pursuant to (ii) of this paragraph during each of the preceding months of July through November shall be a pool plant during the entire period of December through June unless the handler's written request for nonpool status for such seven-month period is received by the market administrator prior to the first day of December: *Provided*, That if the reporting provisions of the order are made effective prior to December 1, 1958, any plant qualified as a pool plant pursuant to (ii) of this para-

graph during the period from the effective date of such reporting provisions through November 30, 1958 shall be qualified as a pool plant during the months of December 1958 through June 1959: *And provided further*, That if such reporting provisions are not made effective prior to December 1, 1958 the first month or portion thereof in which such provisions are effective shall constitute the qualifying period for pooling for the subsequent months through June 1959 and in lieu of the 30 percent shipping requirement specified in (ii) of this paragraph a 25 percent shipment shall constitute qualification and any request for nonpool status during the period through June 1959 must be made of the market administrator on or before the last day of the first month or portion thereof in which such reporting provisions are effective.

(3) Any plant which was a nonpool plant during any of the months of July through November shall not be a pool plant in any of the following months of December through June in which it was operated by the same handler, an affiliate of the handler or any person who controls or is controlled by the handler unless its operation during the July-November period was in the handler's capacity as a producer-handler: *Provided*, That this subparagraph shall not apply to any plant which met all of the applicable requirements for pool plant status under this order during each of such months of July through November, but had nonpool status because it was a pool plant under another Federal order: *And provided further*, That the application of this subdivision for the period through June 1959, shall be based on a plant's nonpool status during the period set forth in the two provisos of subparagraph (2) of this paragraph.

§ 990.4 *Definitions of milk and milk products.* (a) "Milk" means the commodity received from a dairy farmer at a plant as cow's milk. The term also includes milk so received which later has its butterfat content adjusted to at least one-half of 1 percent but less than 10 percent; frozen milk; reconstituted milk; and 50 percent of the quantity, by weight of "half and half".

(b) "Cream" means that portion of milk, containing not less than 16 percent of butterfat, which rises to the surface of milk on standing, or is separated from it by centrifugal force. The term also includes sour cream; frozen cream; milk and cream mixtures containing 16 percent or more of butterfat; and 50 percent of the quantity, by weight, of "half and half".

(c) "Half and half" means any fluid milk product, except concentrated milk, the butterfat content of which has been adjusted to at least 10 percent but less than 16 percent.

(d) "Concentrated milk" means the concentrated, unsterilized milk product resembling plain condensed milk which is disposed of in fluid form for human consumption.

(e) "Fluid milk products" means milk, flavored milk, skim milk, flavored skim milk, cultured skim milk, buttermilk, and concentrated milk in fluid form or any

mixture in fluid form of milk, skim milk and cream containing less than 10 percent of butterfat (except eggnog, yogurt, ice cream mix, evaporated or condensed milk and sterilized products in hermetically sealed containers).

(f) "Producer milk" means only that skim milk and butterfat contained in milk (1) received at a pool plant directly from producers, or (2) diverted from a pool plant in accordance with the conditions set forth in § 990.2 (e).

(g) "Exempt milk" means all skim milk and butterfat: (1) Received at a pool plant as milk, in bulk, from a nonpool plant to be processed and packaged and for which an equivalent quantity of skim milk and butterfat in the form of packaged fluid milk products is returned to the operator of the nonpool plant during the same month, if such receipt and return occurs during an interval in which the facilities of the nonpool plant at which the milk is usually processed and packaged are temporarily unusable because of fire, flood, storm, or similar extraordinary circumstances completely beyond the dealer's control; or (2) received at a pool plant in the form of packaged fluid milk products from a nonpool plant in return for which an equivalent quantity of skim milk and butterfat in the form of bulk milk is moved from a pool plant for processing and packaging during the same month.

(h) "Other source milk" means all skim milk and butterfat contained in or represented by (1) receipts (including any Class II milk product produced in the handler's plant during a prior month) in a form other than as fluid milk products which are reprocessed, converted or combined into another product during the month, and (2) receipts (other than exempt milk) in the form of fluid milk products from any source other than producers or a pool plant(s).

MARKET ADMINISTRATOR

§ 990.10 *Designation of market administrator.* The agency for the administration of this part shall be a market administrator who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of the Secretary.

§ 990.11 *Powers of market administrator.* The market administrator shall have the following powers with respect to this part:

- (a) To administer its terms and provisions;
- (b) To make rules and regulations to effectuate its terms and provisions;
- (c) To receive, investigate, and report to the Secretary complaints of violations of its terms and provisions; and
- (d) To recommend amendments to the Secretary.

§ 990.12 *Duties of market administrator.* The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including, but not limited to the following:

- (a) Within 45 days following the date upon which he enters upon his duties,

execute and deliver to the Secretary a bond conditioned upon the faithful performance of his duties, in an amount and with sureties thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to exercise his powers and perform his duties;

(c) Obtain a bond in a reasonable amount, and with reasonable surety thereon, covering each employee who handles funds entrusted to the market administrator;

(d) Pay, out of the funds provided by § 990.70: (1) The cost of his bond and the bonds of his employees, (2) his own compensation and (3) all other expenses, except those incurred under § 990.69, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any pool handler who, within 5 days after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 990.30 and 990.31 (b) (3), or payments pursuant to § 990.60 to 990.70;

(g) Submit his books and records to examination by the Secretary, and furnish such information and reports as the Secretary may request;

(h) Verify all reports and payments of each handler, by audit, if necessary, of handlers' records and if made available to the market administrator of the records of any person upon whose utilization the classification of skim milk and butterfat for such handler depends;

(i) Prepare and disseminate for the benefit of producers, consumers, and handlers, such general statistics and information as reflects the operation of this order and which do not reveal confidential information;

(j) On or before the date specified, publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate, the following:

(1) The 26th day of each month, the Class I price computed pursuant to § 990.40 (a) for the following month;

(2) The 5th day of each month the Class II price computed pursuant to § 990.40 (b) and the butterfat differential computed pursuant to § 990.61 both for the preceding month;

(3) The 12th day of each month, the basic blended price computed pursuant to § 990.51 and the zone blended prices resulting from the adjustment of the basic blended price by the zone price differentials pursuant to § 990.42, both for the preceding month.

(k) Give each of the producers delivering to a plant, as reported by the han-

dler, prompt written notice of his actual or potential loss of producer status for the first month in which the plant's status has changed or is changing to that of a nonpool plant.

CLASSIFICATION

§ 990.20 *Skim milk and butterfat to be classified.* All skim milk and butterfat which is required to be reported pursuant to § 990.30 shall be classified by the market administrator pursuant to the provisions of §§ 990.21 to 990.24.

§ 990.21 *Classes of utilization.* Subject to the conditions set forth in §§ 990.22, 990.23, and 990.24 the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including that used to produce concentrated milk and reconstituted or fortified skim milk) and butterfat: (1) Sold, distributed or disposed of in the form of fluid milk products (except as provided in paragraph (b) of this section) and (2) not accounted for as Class II milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat (1) used to produce any product except a fluid milk product; (2) disposed of for livestock feed or to bakeries, soup factories and similar establishments; (3) contained in skim milk dumped if the conditions of § 990.31 (e) are met by the handler; (4) contained in inventory of fluid milk products on hand at the end of the month; and (5) in plant shrinkage not in excess of two percent of receipts of skim milk and butterfat, respectively.

§ 990.22 *Transfers of fluid milk products.* Skim milk and butterfat disposed of in the form of any fluid milk product from a pool plant to another plant shall be classified:

(a) In the class in which assigned at the transferee-plant pursuant to § 990.24 if moved to another pool plant.

(b) As Class I milk if moved to the plant of a producer-handler.

(c) In the class in which assigned under the other order if moved to a fully regulated plant under another Federal order.

(d) As Class I milk if moved to a nonpool plant, except the plant of a producer-handler or a fully regulated plant under another Federal order, unless Class II utilization is established: *Provided*, That (1) the amount of such skim milk and butterfat assigned to Class I shall not be less than the Class I disposition from the transferee-plant of skim milk and butterfat, respectively, in the form of fluid milk products on routes in the marketing area, and (2) the amount of such skim milk and butterfat assigned to Class II shall in no event be greater than that volume of skim milk and butterfat, respectively, received in the form of fluid milk products from fully regulated plants under any Federal order, which is in excess of the Class I utilization at such transferee-plant.

(e) By applying the provisions of paragraphs (a) to (d) of this section, whichever is applicable if moved to a nonpool plant, except the plant of a

producer-handler or a fully regulated plant under another Federal order, and thence to another plant: *Provided*, That if the other plant to which such movement is made is located outside the New England States and New York State, classification shall be as Class I milk.

§ 990.23 *Responsibility of handlers and reclassification of milk.* (a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk and butterfat should be classified as Class II milk.

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses the original classification was incorrect.

§ 990.24 *Allocation of skim milk and butterfat classified.* (a) For each month the market administrator shall correct for mathematical and for other obvious errors the reports submitted by each handler pursuant to § 990.30 and shall compute the total pounds of skim milk and butterfat in producer milk in each class for such handler: *Provided*, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by the handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product plus all of the water normally associated with such solids in the form of whole milk.

(b) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk, received during the month in a form other than fluid milk products;

(2) Subtract from the remaining pounds of skim milk in each class in series beginning with Class II milk, the pounds of skim milk received during the month in other source milk in the form of fluid milk products from plants other than fully regulated plants under the provisions of another Federal order;

(3) (i) During the months of July through September, subtract from the pounds of skim milk in Class II milk an amount equal to the remaining volume of skim milk in Class II milk or the product obtained by multiplying by 0.15 the pounds of skim milk in receipts of milk from producers, whichever is less;

(ii) During the months of October through June, subtract from the pounds of skim milk in Class II milk an amount equal to the remaining volume of skim milk in Class II milk or the product obtained by multiplying by 0.05 the pounds of skim milk in receipts of milk from producers, whichever is less;

(4) Subtract from the remaining pounds of skim milk in each class in series beginning with Class II milk the pounds of skim milk in bulk receipts of fluid milk products from fully regulated plants under the provisions of another Federal order;

(5) Subtract from the remaining pounds of skim milk in Class I milk the pounds of skim milk received during the month as exempt milk;

(6) Subtract from the remaining pounds of skim milk in Class I milk the pounds of skim milk in packaged fluid milk products received from fully regulated plants under the provisions of another Federal order;

(7) Add to the remaining pounds of skim milk in Class II the pounds of skim milk subtracted pursuant to subparagraph (3) of this paragraph; and

(8) Subtract from the remaining pounds of skim milk in Class II milk the pounds of skim milk contained in inventory of fluid milk products on hand at the beginning of the month: *Provided*, That if the pounds of skim milk in such inventory exceeds the remaining pounds of skim milk in Class II the balance shall be subtracted from the pounds of skim milk in Class I milk; then

(9) Assign to the remaining pounds of skim milk in each class in sequence beginning with Class I milk, the pounds of skim milk in: (i) receipts of fluid milk products from the pool plants of other handlers not subject to a zone price differential, (ii) receipts of producer milk at the handler's pool plant(s) not subject to a zone price differential, (iii) receipts of producer milk at the handler's pool plant(s) to which a zone price differential is applicable, equal to the volume of skim milk in fluid milk products disposed of directly from such plant(s) as Class I milk outside the marketing area, (iv) receipts of fluid milk products from the pool plants of other handlers not previously assigned pursuant to subdivision (i) of this subparagraph, in the order of the nearness of the plants to Providence according to their zone locations, and (v) receipts of producer milk at the handler's pool plants not previously assigned pursuant to subdivisions (i) and (iii) of this subparagraph in the order of the nearness of the plant(s) to Providence according to their zone locations.

(10) Any remaining pounds of skim milk in each class not assigned shall be called "overage".

(c) Butterfat shall be allocated in accordance with the same procedure prescribed for skim milk in paragraph (b) of this section; and

(d) Add the pounds of skim milk and butterfat allocated to producer milk in each class, pursuant to paragraphs (b) and (c) of this section.

REPORTS, RECORDS AND FACILITIES

§ 990.30 Reports of receipts and utilization. Each pool handler and each nonpool handler, other than a producer-handler who operates a nonpool plant from which fluid milk products are disposed of in the marketing area on routes shall report to the market administrator in the manner set forth in paragraphs (a) and (b) of this section: *Provided*, That during the first six months of operation under this order the handler, if he so elects may report the volumes of milk and milk products received and dis-

posed of in the respective classes in lieu of reporting separately the skim milk and butterfat components of such milk and milk products.

(a) On or before the 8th day after the end of each month each pool handler shall report for each of his pool plants for such month to the market administrator in the detail and on forms prescribed by the market administrator, as follows:

(i) The quantities of skim milk and butterfat contained in:

(i) The receipts of producer milk (including such handler's own farm production);

(ii) The receipts of fluid milk products from other pool plants;

(iii) The receipts of exempt milk;

(iv) The receipts of other source milk;

(v) Inventories of fluid milk products on hand at the beginning and end of the month; and

(vi) The utilization of all skim milk and butterfat required to be reported pursuant to this paragraph.

(b) On or before the 8th day after the end of each month, each handler, other than a producer-handler, who operates a nonpool plant from which fluid milk products are disposed of in the marketing area on routes shall report to the market administrator as follows:

(i) The quantities of skim milk and butterfat contained in:

(i) The receipts of fluid milk products from pool plants;

(ii) The receipts of other source milk;

(iii) The utilization of all skim milk and butterfat required to be reported pursuant to this paragraph; and

(iv) The fluid milk products disposed of within the marketing area on routes.

§ 990.31 Other reports. (a) Except as provided in § 990.30 (b) each nonpool handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each pool handler shall report to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(i) Within 5 days after a producer moves from one farm to another, starts or resumes deliveries to any of a handler's pool plants, or starts delivering his milk to the handler's plant by tank truck, the handler shall file with the market administrator a report stating the producer's name and post office address, the date on which the change took place, and the farm and plant locations involved. The report shall also state, if known, the plant to which the producer had been delivering prior to starting or resuming deliveries;

(2) Promptly after the 5th consecutive day on which a producer has failed to deliver to any of a handler's pool plants, the handler shall file with the market administrator a report stating the producer's name and post office address, the date on which the last delivery was made, and the farm and plant locations involved. The report shall also

state, if known, the reason for the producer's failure to continue deliveries;

(3) Subsequent to the 20th day after the end of the month, and within 5 days after the market administrator's request, his producer payroll for such month, which shall show for each producer:

(i) The daily and total pounds of milk delivered with the average butterfat test thereof; and

(ii) The net amount of such handler's payments to such producer with the prices, deductions, and charges involved.

(c) Each pool handler shall furnish each producer from whom he receives milk with information regarding the daily weight and composite butterfat test of the producer's milk as follows:

(1) Within 3 days after each day on which he receives milk from the producer, the handler shall give the producer written notice of the daily quantity so received;

(2) Within 7 days after the end of any sampling period for which the composite butterfat test of the producer's milk was determined, the handler shall give the producer written notice of such composite test.

(d) In making payments to producers pursuant to § 990.60 (a) (2) or to a cooperative association pursuant to § 990.60 (b) each pool handler shall furnish to such producer or cooperative association with respect to each of its producer-members from whom the handler received milk during the month a written statement showing:

(1) The month and the identity of the handler and of the producer;

(2) The total pounds and average butterfat test of milk delivered by the producer;

(3) The minimum rate at which payment to the producer is required under the provisions of § 990.60 (a) (2);

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The nature and amount of any deductions made in payments due such producer; and

(6) The net amount of payment to the producer.

(e) Each handler dumping skim milk pursuant to § 990.21 (b) (3) shall give the market administrator not less than 6 hours' notice of intention to make such disposition and of the quantities of skim milk involved. In addition, each handler dumping skim milk shall mail or deliver to the market administrator within 48 hours following each dumping not witnessed by the market administrator or his agent, a report in writing, as prescribed by the market administrator, showing the date on which the dumping was made and the quantity dumped, such report to be signed by both the person who dumped the skim milk and the person authorized to sign reports for the handler made pursuant to § 990.30 (if the latter person is not available to sign the report within the 48-hour period, the signature of the plant manager or plant superintendent shall be substituted on the report).

§ 990.32 *Records and facilities.* Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations together with such facilities as are necessary for the market administrator to verify or establish the correct data for each month with respect to:

(a) The information contained in reports submitted in accordance with this order, and

(b) The weights and tests for butterfat and other content of all milk and milk products handled.

§ 990.33 *Retention of records.* All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the calendar month to which such books and records pertain: *Provided*, That if within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c (15) (A) of the Act or a court action specified in such notice, the handler shall retain such books and records, until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

MINIMUM PRICES

§ 990.40 *Class prices.* Subject to the provisions of § 990.42 each pool handler shall pay, at the time and in the manner set forth in § 990.60, for each hundredweight of milk received at his pool plant(s) during the month from producers or an association of producers not less than the following prices per hundredweight for the respective quantities of milk in each class computed pursuant to § 990.24:

(a) *Class I price.* The Class I price shall be the New England basic Class I price per hundredweight determined pursuant to § 990.41 plus 61 cents.

(b) *Class II price.* The Class II price per hundredweight shall be determined for each month as follows:

(1) Subtract 52.5 cents from the weighted average price per 40-quart can of 40 percent bottling quality cream f. o. b. Boston, as reported by the United States Department of Agriculture for the month, divide the remainder by 33, multiply by 0.98, and multiply the result by 3.7;

(2) Multiply by 7.85 the simple average of the prices per pound of roller process and spray process nonfat dry milk solids for human consumption, in carlots, f. o. b. Chicago area manufacturing plants, as reported by the United States Department of Agriculture for the period from the 26th day of the preceding month through the 25th day of the month during which such milk is delivered;

(3) Add the results obtained in subparagraphs (1) and (2) of this paragraph, and from the sum subtract the amount shown below for the applicable month. Subject to subparagraph (4) of this paragraph, the result is the Class II price per hundredweight for producer milk received at plants located not more than 100 miles from Providence.

Month:	Amount
January and February.....	\$0.612
March and April.....	0.732
May and June.....	0.792
July.....	0.732
August and September.....	0.672
October, November, and December.....	0.612

(4) For each month in which no cream price, as described in subparagraph (1) of this paragraph, is reported, and for each month in which the amount determined pursuant to this subparagraph is greater than the amount computed pursuant to subparagraph (3) of this paragraph the amount determined pursuant to this subparagraph shall be the Class II price per hundredweight of milk received from producers:

(i) Adjust the average price for milk for manufacturing purposes, f. o. b. plants United States, as reported on a preliminary basis by the United States Department of Agriculture for the month by subtracting for each one-tenth of 1 percent of average butterfat content above 3.7 percent, or adding for each one-tenth of 1 percent of average butterfat content below 3.7 percent, an amount per hundredweight which shall be calculated by the market administrator by multiplying by 0.125 the average of the daily prices, using the midpoint of any price range as one price, for Grade A (92-score) butter at wholesale in the New York market as reported for the period between the 16th day of the preceding month and the 15th day, inclusive, of the current month by the United States Department of Agriculture.

(ii) Adjust the result obtained in subdivision (i) of this subparagraph by the amount shown below for the applicable month:

Month:	Amount
January.....	+0.188
February.....	+0.178
March.....	+0.008
April.....	-0.032
May.....	-0.062
June.....	-0.052
July.....	+0.138
August.....	+0.228
September.....	+0.198
October.....	+0.218
November.....	+0.228
December.....	+0.228

§ 990.41 *Computation of New England basic Class I price.* The New England basic Class I price per hundredweight of milk containing 3.7 percent butterfat shall be determined for each month pursuant to this section. The latest reported figures available to the market administrator on the 25th day of the preceding month shall be used in making the following computations, except that if the 25th day of the preceding month falls on a Sunday or legal holiday the latest figures available on the next succeeding work day shall be used.

(a) Compute the economic index as follows:

(1) Divide by 1.143 the monthly wholesale price index for all commodities as reported by the Bureau of Labor Statistics, United States Department of Labor, with the years 1947-49 as the base period;

(2) Using the data on per capita personal income, by States and regions, as published by the United States Department of Commerce, establish a "New England adjustment percentage" by computing the current percentage relationship of New England per capita personal income to per capita personal income in continental United States. Multiply by the New England adjustment percentage the quarterly figure showing the current annual rate of per capita disposable personal income in the United States as released by the United States Department of Commerce or the Council of Economic Advisers to the President. Divide the result by 15.34 to determine an index of per capita disposable personal income in New England;

(3) Multiply by 20 the average price per 100 pounds paid by farmers in the New England region for all mixed dairy feed of less than 29 percent protein content as reported by the United States Department of Agriculture for the month and divide the result by 0.884 to determine the dairy ration index. Compute the average, weighted by the indicated factors, of the following farm wage rates reported for the New England region by the United States Department of Agriculture: Rate per month with board and room, 1; rate per month with house, 1; rate per week with board or room, 4.33; rate per week without board and room, 4.33; and the rate per day without board or room, 26. Divide the average wage rate so computed by 1.458 to determine the wage rate index. Multiply the dairy ration index by 0.6 and the wage rate index by 0.4 and combine the two results to determine the grain-labor cost index; and

(4) Divide by 3 the sum of the wholesale price index, the index of per capita disposable income in New England, and the grain-labor cost index determined pursuant to this paragraph. The result shall be known as the economic index.

(b) The seasonal adjustment factor shall be the factor listed below for the month for which price is being computed.

Month:	Seasonal adjustment factor
January and February.....	1.04
March.....	1.00
April.....	.92
May and June.....	.88
July.....	.96
August.....	1.00
September.....	1.04
October, November and December.....	1.08

(c) Compute a New England basic Class I price index by multiplying the economic index determined pursuant to paragraph (a) of this section by the applicable seasonal adjustment factor pursuant to paragraph (b) of this section and multiplying the result by the supply-

PROPOSED RULE MAKING

demand adjustment factor determined by the market administrator of Part 904 of this chapter regulating the handling of milk in the Greater Boston marketing area pursuant to § 904.43 (b) of this chapter.

(d) The New England basic Class I price shall be as shown in the following table:

New England basic Class I price index ¹ \$0.05592		New England basic Class I price
At least—	But less than—	
\$4.20	\$4.42	\$4.31
4.42	4.64	4.53
4.64	4.86	4.75
4.86	5.08	4.97
5.08	5.30	5.19
5.30	5.52	5.41
5.52	5.74	5.63
5.74	5.96	5.85
5.96	6.18	6.07
6.18	6.40	6.29

¹ If the New England basic Class I price index times \$0.05592 is less than \$4.20 or is \$6.40 or more, the New England basic Class I price shall be determined by extending the table at the indicated rate of extension.

(e) Notwithstanding the provisions of paragraphs (a) to (d) of this section, the New England basic Class I price for November or December of each year shall not be lower than such price for the immediately preceding month.

§ 990.42 *Zone price differentials to handlers.* In the case of milk received at plants located in excess of 100 miles from Providence, Rhode Island, the class prices determined pursuant to § 990.40 shall be subject to zone price differentials based upon the zone location of the plant.

(a) The zone location of each plant shall be determined by the market administrator and shall be based upon highway mileage distance as determined by use of the appropriate State maps contained in Mileage Guide No. 6, and revisions thereof, issued by Household Goods Carriers' Bureau, Agent, Washington, D. C. The distance shall be the lowest highway mileage between Providence and the named point on the map which is nearest to the plant, over roads designated thereon as paved, first-class, all-weather roads. In the event that the named point is not located on a through first-class road, such other roads shall be used to reach a through first-class road as will result in the lowest highway mileage to Providence, except that such other roads shall not be used for a distance of more than 15 miles if it is otherwise possible to connect with a through first-class road. In any instance in which the map does not clearly show the mileage between points on a road, the mileage used shall be the mileage as determined by the highway authority for the State in which the road is located.

(b) The zone price differentials for each plant shall be those applicable to its zone location as shown in the following table.

PLANT ZONE PRICE DIFFERENTIALS

A	B	C	D
Distance to Providence (miles)	Zone	Class I and blended price differential (cents per hundred-weight)	Class II price differential (cents per hundred-weight)
101 to 110	11	-42.0	-4.5
111 to 120	12	-43.2	-4.5
121 to 130	13	-44.4	-4.5
131 to 140	14	-45.6	-4.5
141 to 150	15	-46.8	-4.5
151 to 160	16	-48.0	-6.0
161 to 170	17	-49.2	-6.0
171 to 180	18	-50.4	-6.0
181 to 190	19	-51.6	-6.0
191 to 200	20	-52.8	-6.0
201 to 210	21	-54.0	-7.0
211 to 220	22	-55.0	-7.0
221 to 230	23	-56.0	-7.0
231 to 240	24	-57.0	-7.0
241 to 250	25	-58.0	-7.0
251 to 260	26	-59.0	-8.0
261 to 270	27	-60.0	-8.0
271 to 280	28	-61.0	-8.0
281 to 290	29	-62.0	-8.0
291 to 300	30	-63.0	-8.0
301 and over	31 and over ¹	-	-8.0

¹ Class I and blended price differentials applicable to plants located more than 300 miles from Providence shall be obtained by extending the table at the rate of 1 cent for each additional 10 miles, except that in no event shall the Class I or blended price at any zone be less than the Class II price for the month for plants in such zone.

§ 990.43 *Use of equivalent factors in formulas.* If for any reason a price, index, or wage rate specified by this part for use in computing class prices and for other purposes is not reported or published in the manner described in this part, the market administrator shall use a price, index, or wage rate determined by the Secretary to be equivalent to or comparable with the factor which is specified.

APPLICATION OF PROVISIONS

§ 990.45 *Producer-handlers.* Sections 990.20 to 990.24, 990.40 to 990.43, 990.46, 990.50 and 990.51, and 990.60 to 990.70 shall not apply to a producer-handler.

§ 990.46 *Payments on other source milk.* Within 16 days after the end of each month handlers shall make payments to producers through the producer-settlement fund as follows:

(a) Each pool handler who received other source milk which is allocated to Class I pursuant to § 990.24 (b) (1) shall make payment on the quantity so allocated at the difference between the Class I price and the Class II price applicable at Providence as computed pursuant to § 990.40.

(b) Each pool handler who received other source milk which is allocated to Class I pursuant to § 990.24 (b) (2) shall make payment on the quantity so allocated as follows:

(1) On other source milk received at a pool plant from a nonpool plant located in Maine, the payment shall be at the difference between the Class I price pursuant to § 990.40 (a) applicable at the zone of the nonpool plant and the lesser of either the simple average for the month of the lowest minimum semi-monthly prices for Class II milk containing 3.7 percent butterfat which are established by the Maine Milk Commission

for the market in which such nonpool plant is located or the Class II price determined pursuant to § 990.40 (b) for the zone location of such plant;

(2) Except as provided in subparagraph (1) of this paragraph, the payment on other source milk received at a pool plant from a nonpool plant shall be at the difference between the Class I and Class II price computed pursuant to § 990.40 for the zone location of the nonpool plant;

(3) For the purposes of this paragraph, other source milk received from dairy farmers for other markets shall be considered as received from the nonpool plant to which they ordinarily delivered.

(c) Each pool handler who receives other source milk in the form of bulk skim milk from a Part 927 of this chapter pool plant which milk was classified and priced as other than Class I pursuant to such order and is allocated to Class I pursuant to § 990.24 (b) (4) shall make payments on the volume of such skim milk so allocated at the difference between the Class I and the Class II price computed pursuant to § 990.40 for the zone location of the plant from which such skim milk was received.

(d) Each nonpool handler (except a buyer-handler) who disposes of fluid milk products in the marketing area on routes shall make payment at the difference between the Class I price and the Class II price for the zone location of his plant on the amount of such disposition which is in excess of his receipts of pool milk and receipts of fluid milk products classified and priced as Class I milk under this part or any other Federal order.

(e) Each buyer-handler shall make payment at the difference between the Class I price and the Class II price for the zone location of his plant on the amount of his Class I utilization which is in excess of his receipts of pool milk and receipts of fluid milk products classified and priced as Class I milk under this part or any other Federal order.

DETERMINATION OF BLENDED PRICE TO PRODUCERS

§ 990.50 *Computation of the obligation of each pool handler.* For each month, the market administrator shall compute the value of producer milk for each pool handler as follows:

(a) Multiply the quantity of producer milk in each class computed pursuant to § 990.24 by the applicable class price, and total the resulting amounts.

(b) Add the amount of any payments due from such handler pursuant to § 990.46 (a), (b) or (c).

(c) Add an amount computed by multiplying the amount of overage in each class computed pursuant to § 990.24 (b) (10) and (c) by the applicable class price adjusted by the butterfat differential computed pursuant to § 990.61.

(d) Add the amount computed by multiplying the difference between the applicable Class II price for the preceding month and the appropriate Class I price for the current month by the hundredweight of producer milk classified in Class II for the preceding month

or the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 990.24 (b) (8) and (c) for the month, whichever is less.

(e) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim and butterfat for previous months.

§ 990.51 *Computation of the basic blended price.* For each month the market administrator shall compute the basic blended price per hundredweight as follows:

(a) Combine into one total the net obligation computed pursuant to § 990.50 for each handler who made reports prescribed in § 990.30 (a) for the month and who were not in default of payments pursuant to § 990.65 for the preceding month.

(b) Deduct the amount of the plus differentials applicable pursuant to § 990.63 and add the amount of the minus differentials which are applicable pursuant to § 990.62.

(c) Add an amount equal to not less than one-half of the unobligated balance on hand in the producer-settlement fund.

(d) Add the total amount of payments due pursuant to § 990.46 (d) and (e).

(e) Divide the resulting amount by the total hundredweight of producer milk included under paragraph (a) of this section.

(f) Subtract not less than 4 cents nor more than 5 cents. The result is the basic blended price applicable for producer milk containing 3.7 percent butterfat received at plants to which no zone price differentials are applicable.

PAYMENTS

§ 990.60 *Time and method of payment for producer milk.* (a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the 5th day after the end of each month, an amount not less than the Class II price for the previous month multiplied by the hundredweight of milk received from such producer during the first 15 days of such month: *Provided*, That for the first month of operation of this part, the price applicable under this subparagraph shall be the Boston city plant Class II price for the previous month;

(2) On or before the 20th day after the end of each month, for the quantity of milk received during the month at not less than the basic blended price per hundredweight computed pursuant to § 990.51 subject to the differentials provided in §§ 990.61, 990.62, and 990.63 less payments made to such producer pursuant to subparagraph (1) of this paragraph and deductions authorized in writing by the producer: *Provided*, That if by such date such handler has not received full payment from the market administrator pursuant to § 990.66 for such milk, he may reduce pro rata his payment to producers by not more than the amount of such underpayment. Payment to producers shall be com-

pleted thereafter not later than the date for making payment pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(b) In the case of an association of producers which the Secretary determines is authorized by its producer-members to collect payment for their milk and which has so requested any handler in writing such handler shall on or before the 2d day prior to the date on which payments are due individual producers, pay the association for milk received during the month from the producer-members of such association as determined by the market administrator, an amount not less than the total due such producer-members as determined pursuant to paragraph (a) of this section.

(c) In the case of a handler who purchases fluid milk products from an association of producers in its capacity as a handler, such handler shall on or before the 2d day prior to the date on which payments are due individual producers pay such association for fluid milk products so received during the month from such association, not less than the value of skim milk and butterfat in such milk and milk products as classified pursuant to § 990.24 at the applicable class prices pursuant to § 990.40 and the butterfat differential pursuant to § 990.61.

§ 990.61 *Butterfat differential.* Each handler shall, in making payments to each producer or association of producers for milk received during the month, add for each one-tenth of 1 percent of average butterfat content above 3.7 percent, or deduct for each one-tenth of 1 percent of average butterfat content below 3.7 percent, an amount per hundredweight which shall be calculated by the market administrator as follows: Subtract 52.5 cents from the weighted average price per 40-quart can of 40 percent bottling quality cream, f. o. b. Boston, as reported by the United States Department of Agriculture for the period between the 16th day of the preceding month and the 15th day inclusive of the month during which such milk is delivered, and divide the remainder by 330. If the cream price described above is not reported as indicated the butterfat differential shall be determined by multiplying by 1.25 the average of the daily prices, using the midpoint of any range as one price, for Grade A (92-score) butter at wholesale in the New York market as reported for the period between the 16th day of the preceding month and the 15th day, inclusive, of the month during which such milk is delivered, by the United States Department of Agriculture and dividing the result by 10.

§ 990.62 *Zone price differentials.* In making payments to producers pursuant to § 990.60 the blended price to be paid for producer milk received at the handler's pool plant(s) shall be subject to the differentials set forth in column C of the table in § 990.42 (b).

§ 990.63 *Farm location differentials.* (a) In making payments for milk delivered by a producer whose farm is located in Rhode Island or east of the Con-

necticut River in Connecticut, or in any of the Massachusetts counties of Barnstable, Bristol, Dukes, Nantucket, Plymouth, Norfolk, Suffolk or that part of Worcester or Middlesex south of the Massachusetts turnpike, there shall be added 46 cents per hundredweight unless such addition gives a result greater than the Class I price pursuant to §§ 990.40 (a) and 990.42 which is effective at the plant to which such milk is delivered, in which event there shall be added an amount which will give as a result such price.

(b) In making payments for milk delivered by a producer whose farm is located in the Massachusetts counties of Essex or in that part of Worcester or Middlesex north of the Massachusetts turnpike or in the New Hampshire towns of New Ipswich or Greenville, there shall be added 23 cents per hundredweight unless such addition gives a result greater than the Class I price pursuant to §§ 990.40 (a) and 990.42 which is effective at the plant to which such milk is delivered, in which event there shall be added an amount which will give as a result such price.

§ 990.64 *Producer-settlement fund.* The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 990.46 (d) and (e), 990.65, 990.67, and 990.68 and out of which he shall make all payments pursuant to §§ 990.66, 990.67, and 990.68: *Provided*, That the market administrator shall offset any such payment due to any handler against payment due from such handler.

§ 990.65 *Payments to the producer-settlement fund.* On or before the 16th day after the end of each month, each handler, including an association of producers which is a handler, shall pay to the market administrator for payment to producers through the producer-settlement fund the amount by which the net pool obligation of such handler computed pursuant to § 990.50 is greater than the sum required to be paid his producers as determined by the application of the basic blended price computed pursuant to § 990.51 adjusted by the differentials applicable pursuant to §§ 990.62 and 990.63.

§ 990.66 *Payments out of the producer-settlement fund.* On or before the 18th day after the end of the month, the market administrator shall pay to each handler for payment to producers the amount by which the sum required to be paid his producers as determined by the application of the basic blended price computed pursuant to § 990.51 adjusted by the differentials applicable pursuant to §§ 990.62 and 990.63 is greater than the net pool obligation of such handler computed pursuant to § 990.50: *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 990.67 *Errors in payment.* Whenever audit by the market administrator

of a handler's reports, books, records or accounts discloses adjustments to be made, for any reason which result in moneys due:

(a) The market administrator from such handler.

(b) Such handler from the market administrator, or

(c) Any producer or association of producers from such handler, the market administrator shall promptly notify such handler of any amount due and explain the basis of such adjustment and payment thereof shall be made on or before the date for making payment set forth in the provision under which such error occurred, for the month following that in which such notification is given.

§ 990.68 Overdue accounts. Any unpaid obligation of a handler or of the market administrator pursuant to §§ 990.46 and 990.65 to 990.70 shall be increased one-half of one percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

§ 990.69 Marketing service—(a) Marketing service deduction—nonmembers of an association of producers. In making payments to producers pursuant to § 990.60 (a) (2), each handler shall, with respect to all milk delivered by each producer other than himself during each month, except as set forth in paragraph (b) of this section, deduct 5 cents per hundredweight, or such lesser amount as the market administrator shall determine to be sufficient, and shall, on or before the 20th day after the end of each month, pay such deductions to the market administrator. Such moneys shall be expended by the market administrator only in providing for market information, and for verification of weights, samples, and tests of milk delivered by such producers. The market administrator may contract with an association or associations of producers for the furnishing of the whole or any part of such services to, or with respect to the milk delivered by, such producers.

(b) **Marketing service deduction—members of an association of producers.** In the case of producers who are members of an association of producers as determined by the Secretary, which is actually performing the services set forth in paragraph (a) of this section, each handler shall, in lieu of the deductions specified in paragraph (a) of this section, make such deductions from payments made pursuant to § 990.60 (a) (2) as may be authorized by such producers and pay, on or before the 20th day after the end of each month, such deductions to such associations, accompanied by a statement showing the pounds of milk delivered by each producer from whom the deduction was made.

§ 990.70 Payment of administrative expense. As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator, on or before the 20th day after the end of the month, 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, as follows:

(a) Each pool handler shall make such payment with respect to all: (1)

Receipts of producer milk, including such handler's own production; (2) receipts of exempt milk; and (3) except as provided in paragraph (c) of this section, other source milk in his plant which is classified as Class I.

(b) Except as provided in paragraph (c) of this section each buyer-handler shall make such payment with respect to other source milk in his plant which is classified as Class I and each nonpool handler, except a buyer-handler, shall make such payment with respect to other source milk which is disposed of as Class I milk in the marketing area on routes.

(c) In the case of other source milk received in the form of fluid milk products from a fully regulated plant under another Federal order the rate of payment applicable pursuant to paragraphs (a) and (b) of this section shall be the amount by which the rate of assessment under this part exceeds the rate of assessment applicable under the other Federal order.

§ 990.71 Termination of obligations. The provisions of this section shall apply to any obligation under this part for the payment of money irrespective of when such obligation arose.

(a) The obligation of any handler to pay money required to be paid under the terms of this order shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service on such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving

fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files pursuant to section 8c (15) (A) of the act, a petition claiming such money.

MISCELLANEOUS PROVISIONS

§ 990.80 Effective time. The provisions of this part, or any amendments to its provisions, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 990.81.

§ 990.81 Suspension or termination. The Secretary may suspend or terminate this part or any provision thereof whenever he finds that it obstructs or does not tend to effectuate the declared policy of the act. This part shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

§ 990.82 Continuing obligations. If, upon the suspension or termination of any or all provisions of this part, there are any obligations arising under it, the final accrual or ascertainment of which requires further acts by any person, such further acts shall be performed notwithstanding such suspension or termination.

§ 990.83 Liquidation. Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected over and above the amount necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

§ 990.84 Agents. The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 990.85 Separability of provisions. If any provision of this part, or its application to any person or circumstances is held invalid, the application of such provision and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

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